राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

बुधवार, 22 जून, 2016 / 1 आषाढ़ 1938

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, 16th May, 2016

No: Shram (A) 6-1/2016 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:--

Sr. No.	Case No.	Title of the Case	Date of Award
1.	108/2010	Sh. Happy Thakur V/s M/s Synergy Tele Communications (P) Ltd. Nalagarh.	07-04-2016
2.	109/2010	Sh. Vikram Singh V/s -do-	07-04-2016
3.	91/2010	Sh. Bag Singh V/s M/s S.M.Electronics, Parwanoo.	09-04-2016
4.	55/2013	Sh. Shyam Bihari V/S M/s Pyramid Electronics, Nalagarh.	11-04-2016
5.	91/2013	Sh. Hussan Singh V/S Som Dutt Builder Pvt. Ltd.	11-04-2016
6.	06/2015	Sh. Ashok Kumar V/S Principal, Pt. Gauri Shankar Memorial Polytechnic, Distt. Solan.	12-04-2016
7.	39/2013	Sh. Ratti Ram V/S DFO, Renuka Ji.	12-04-2016
8.	78/2014	Workers Union V/s M/s Sai Engineering Foundation, Shimla.	18-04-2016
9.	38/2015	Sh. Vikas Thakur V/S The G.M. M/s Auro Dyeing Baddi, Solan.	19-04-2016
10.	77/2013	Sh. Arun Kumar V/S Dr. Y.S. Parmar.	23-04-2016
11.	15/2011	Sh Ashwani Kumar V/S SCL	28-04-2016
12.	16/2011	Sh.Ashok Kumar V/s -do	28-04-2016
13.	17/2011	Sh. Sany Ram V/s – Sh. Pawan Nag V/s Soil Conservation of Forest. do-	28-04-2016
14.	72/2009		29-04-2016
15.	36/2013	Sh. Ram Rattan V/S Geep Batteries India Ltd.	29-02-2016

By order,
Sd/-
Pr. Secretary (Lab. & Emp.).

7-4-2016
Present: Shri J.C Bhardwaj, AR for petitioner.
Shri A.K Bakshi, Advocate for respondent.

At this stage, *vide* separate statements recorded today, it has been stated by Shri A.K Bakshi, Advocate for respondent that the respondent management is ready to pay a sum of ₹ 1,00,000/- (₹ one lakh only) to the petitioner towards full & final settlement of the claim in reference no. 108/2010 and the said amount shall be paid to the petitioner within a period of thirty days from today, otherwise the same shall carry interest @ 9% per annum from the date of order till

its realization. The petitioner has also accepted the amount offered by the respondent vide separate statement.

From the perusal of the statement of the petitioner as well as the learned counsel for the respondent, it is clear that the petitioner has settled the dispute with the respondent and agreed to accept ₹ 1,00,000/- from the respondent in full & final settlement of the claim. Since, the matter has been settled between the parties amicably as such the reference is ordered to be answered accordingly and the award is passed in terms of the statements of the petitioner as well as learned counsel for the respondent which shall form part of this award. However, it is made clear that the amount of ₹ 1,00,000/- (₹ one lakh only) shall be paid to the petitioner within a period of thirty days from today, otherwise the same shall carry interest @ 9% per annum from the date of order till its realization. It is also made clear that thereafter the petitioner will have no right against the respondent management regarding any claim. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
7.4.2016.

(SUSHILKUKREJA),
Presiding Judge,
Labour Court, Shimla.
Camp at Nalagarh.

7.4.2016

Present: Shri J.C Bhardwaj, AR for petitioner.
Shri A.K Bakshi, Advocate for respondent.

At this stage, vide separate statements recorded today, it has been stated by Shri A.K Bakshi, Advocate for respondent that the respondent management is ready to pay a sum of ₹ 1,00,000/- (₹ one lakh only) to the petitioner towards full & final settlement of the claim in reference no. 109/2010 and the said amount shall be paid to the petitioner within a period of thirty days from today, otherwise the same shall carry interest @ 9% per annum from the date of order till its realization. The petitioner has also accepted the amount offered by the respondent vide separate statement.

From the perusal of the statement of the petitioner as well as the learned counsel for the respondent, it is clear that the petitioner has settled the dispute with the respondent and agreed to accept ₹ 1,00,000/- from the respondent in full & final settlement of the claim. Since, the matter has been settled between the parties amicably as such the reference is ordered to be answered accordingly and the award is passed in terms of the statements of the petitioner as well as learned counsel for the respondent which shall form part of this award. However, it is made clear that the amount of ₹ 1,00,000/- (₹ one lakh only) shall be paid to the petitioner within a period of thirty days from today, otherwise the same shall carry interest @ 9% per annum from the date of order till its realization. It is also made clear that thereafter the petitioner will have no right against the respondent management regarding any claim. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
7.4.2016.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.
Camp at Nalagarh.

Shri Bhag Singh V/S M/S S.M. Electronics, Parwanoo.

9-4-2016

Present: Petitioner in person.
Shri Satish Kumar Berry, sole Proprietor of respondent.

It has been stated by Shri Satish Kumar Berry, sole Proprietor of respondent that the respondent is ready and willing to pay Rs 30,000/- as full & final settlement of the claim arising out the reference no. 91/2010. The petitioner has also accepted the amount offered by the respondent.

To this effect statements of petitioner and respondent recorded separately.

In view of the aforesaid statements, the parties have settled the dispute amicably. Accordingly the reference stands answered in terms of the statements of petitioner and respondent which shall from part of this award. However, it is made clear that the amount of Rs 30,000/-(Rs Thirty Thousand only) shall be paid within a period of thirty days from today, failing which the same shall carry interest @ 9% per annum. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
9.4.2016

(Dr. Sushma Kaushal)	(Vijay Chopra)	(Sushil Kukreja)
Member	Member	Chairman

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

11.4.2016.
Present: None for the petitioner.
Shri R.K Khidtta, Advocate for respondent.

Case called twice but none appeared on behalf of the petitioner. It is 10:55 AM. Be called again.

(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for the petitioner.
ShriR.K Khidtta, Advocate for respondent.

It is 12:50 PM case called again but none appeared on behalf of the petitioner. Be called after lunch.

(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present: None for the petitioner.
ShriR.K Khidtta, Advocate for respondent.

It is 3:35 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner.

For today, this case has been fixed for filing of rejoinder and framing of issues but neither the petitioner nor his counsel appeared before this Court despite the fact that the case has been repeatedly called which clearly shows that the petitioner is not interested to pursue his case. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever available on file. The reference sent by the appropriate government for adjudication is as under:

> "**Whether miscellaneous demands raised vide demand notice dated 18.6.2011 (copy enclosed) by ShriShyamBihariPandey and 33 other co-workers of Pyramid Electronics, Village Snade, P.O Manpura, Tehsil Nalagarh District Solan, HP to be fulfilled by the Occupier/Managing Director M/s Pryamid Electronics, Village Snade, P.O Manpura, Tehsil Nalagarh, District Solan, HP are legal, justified and maintainable? If yes, what relief and benefits the above workers are entitled to from the above management/occupier?"**

Since, the petitioner has failed to appear before this Court in order to file rejoinder and to lead evidence, I have no hesitation in coming to the conclusion that the miscellaneous demands raised vide demand notice dated 18.6.2011 by the workers of Pyramid Electronics, Village Snade, P.O Manpura, Tehsil Nalagarh District Solan, HP to be fulfilled by the Occupier/Managing Director M/s Pryamid Electronics, Village Snade, P.O Manpura, Tehsil Nalagarh, District Solan, HP arenot legal, maintainable and justified. Hence, in the absence of any material/evidence on record, it cannot be held that the demands raised vide demand notice dated 18.6.2011 by the workers to be fulfilled by the respondent are legal, maintainable and justified and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
11.4.2016.

(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

11.4.2016.
Present: None for the petitioner.
Shri Rajesh Verma, Advocate for respondent.

Case called twice but none appeared on behalf of the petitioner. It is 10:50 AM. Be called again.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for the petitioner.
Shri Rajesh Verma, Advocate for respondent.

It is 12:55 PM case called again but none appeared on behalf of the petitioner. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present: None for the petitioner.
Shri Rajesh Kumar, Advocate for respondent.

It is 3:25 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner.

For today, this case has been fixed for the evidence of the petitioner but neither the petitioner nor his counsel appeared before this Court despite the fact that the case has been repeatedly calledwhich clearly shows that the petitioner is not interested to pursue his case.Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever available on file. The reference sent by the appropriate government for adjudication is as under:

> "**Whether termination of the services of ShriHussan Singh S/o ShriBalbir Singh Village Thakuron, P.O GagalShikore, Tehsil Pachhad, District Sirmour, HP w.e.f. 7.6.2012 by SomDutt Builders Pvt. Ltd., Engineering Contractors, NH-22 KumarhattiChowkSolan District Solan HP without an enquiry and complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"**

Since, the petitioner has failed to appear before this Court in order to lead evidence, I have no hesitation in coming to the conclusion that he has failed to prove that his services had been terminated w.e.f. 7.6.2012 by the respondent in an illegal and unjustified manner and that too without conducting an enquiry. Hence, in the absence of any material/evidence on record, it cannot be held that his services were wrongly and illegally terminated by the respondentand as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this

award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
11.4.2016.

(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

12.4.2016.
Present: None for the petitioner.
Respondent already ex-parte.

Case called twice but none appeared on behalf of the petitioner. It is 10:55 AM. Be called again.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for the petitioner.
Respondent already ex-parte.

It is 12:50 PM case called again but none appeared on behalf of the petitioner. Be called after lunch.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present: None for the petitioner.
Respondent already ex-parte.

It is 3:35 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner.

For today this case was fixed for filing of claim but neither the petitioner nor any other person authorized on his behalf/ counsel appeared before this Court despite the case having been called repeatedly which goes to show that the petitioner is not interested to pursue his case. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever available on the file. The following reference has been received from the appropriate government for adjudication:

"**Whether termination of services of Shri Ashok Kumar S/o Shri Ganga Dutt Sharma R/o V.P.O Batal, Tehsil Arki, District Solan, HP employed as Peon w.e.f. 1.9.2013by the Chairman/Principal Pt. Gauri Shankar Memorial Polytechnic, Devnagar P.O**

Bakhalag, Tehsil Arki, District Solan, HP is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer (s)?"

As per reference received from the appropriate government, the petitioner has alleged histermination of services by the respondent w.e.f. 1.9.2013 to be illegal and unjustified but the petitioner has failed to file the claim petition and to lead evidence which could go to show that he was illegally terminated by the respondent. Hence, in the absence of any claim petition/ evidence on record, the reference is answered against the petitioner. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
12.3.2016.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUMLABOUR COURT, SHIMLA, (H.P).

Ref. No. 39 of 2013.

Instituted on. 5.7.2013.

Decided on 12.4.2016.

Ratti Ram S/o Shri Ramsa Ram R/o Village Naya Panjur, P.O Hallan, Tehsil Shillai, District Sirmour, HP. . .*Petitioner.*

Vs.

1. The Divisional Forest Officer, Forest Division Renukaji, District Sirmour, HP.
2. Range Officer, Forest Range Shillai, Tehsil Shillai, District Sirmour, HP.

. .*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.R Rahi, Advocate.
For respondents : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether time to time termination of the services of Shri Ratti Ra S/o Ramsa Ram R/o Village Naya Panjur, P.O Hallan, Tehsil Shillai District Sirmour, HP by The Divisional Forest Officer, Forest Division Renukaji, District Sirmour during the year, 2004 to 2007 and finally during March/April 2008 as per reply of employer, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including re-instatement in service, back-wages, seniority and past

service benefits and compensation, the above aggrieved workman is entitled to from the above employer?"

2. In nutshell, the case of the petitioner is that initially he was engaged as daily rated beldar w.e.f. 1.1.1999 with the respondents department and was asked to work at Forest Beat loza manal, forest range Shillai and since then the petitioner discharged his duties as assigned to him with full sincerity, honesty, devotion, missionary zeal as well as to the entire satisfaction of his superiors and there was no complaint against him. The petitioner had worked till 31st March 2011 continuously and thereafter his services have been terminated orally by the respondents without complying with the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is further stated that the respondents were giving artificial breaks willfully to the petitioner in order to deprive him the status of regularization. The petitioner had worked upto 31st March, 2011 but his attendance had not been marked on muster roll as he was forced to work on bill basis. It is also stated that the employers have violated the principles of audi aleram partem as no opportunity of being heard had been afforded to the petitioner and even no enquiry was conducted against him and after his termination, he is unemployed. By filing CWP no. 3259 of 2011 before the Hon'ble High Court, the petitioner has challenged his termination which was decided on 12.9.2011. Against this back-drop a prayer for his re-engagement, along-with back-wages and other consequential service benefits has been made.

3. By filing reply, the respondents had contested the claim of the petitioner wherein preliminary objections had been taken qua abandonment and the petitioner had not completed 8/10 years with minimum 240 days in each calendar year. On merits, it has been asserted that the petitioner was engaged as daily wage labourer for seasonal forestry works in Shillai Range of Renukaji Forest Division from 1998 and he worked with the department till 2008 in a casual manner, who used to leave the work at his own will and continued to do so. It is further asserted that the petitioner had not completed 240 working days in any calendar year. Thereafter, during March, 2011 the petitioner was given the work on bill basis and not as daily wager and even vide letter dated 26.11.2011, 20.12.2011 and 5.1.2012, the petitioner was called for duty. Since, the petitioner was given work on bill/labour contract during March, 2011, hence, section 25-F of the Act is not applicable. It is further asserted that there has been drastic reduction in quantum of work and budget in the forest department over past several years and as such only limited works are available during specific season and senior daily wager and regular employees of the forest department are currently doing these kind of works. The respondents have not employed any daily wager after 2008. Since, the petitioner had left the job at his own after 2008, hence, he is not entitled to any relief. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegation by denying those of the respondents.

5. Pleadings of the parties gave rise to the following issues which were struck on 20.2.2014.

1. Whether time to time termination of the services of the petitioner during the years 2004 to 2007 and finally during March/April 2008, are illegal and unjustified as alleged?
. .OPP.

2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to?
. . OPP.

3. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Becomes redundant.
Relief.	Reference answered in favour of the respondent and against the petitioner per operative part of award.

Reasons for findings

Issues no. 1.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the petitioner was engaged as daily wager by the respondents but he was given artificial breaks in order to deprive him for regularization which is against the provisions of the Act and even juniors to him are still working with the department. He also contended that again the petitioner was engaged by the respondents on bill basis w.e.f. March, 2011, against the provisions of the Act.

9. On the other hand, Ld. ADA for the respondents contended that the services of the petitioner had never been terminated by the respondents, who himself had abandoned his job without intimation to the respondents department. He further contended that the petitioner had not completed 240 days in any calendar year and no juniors to him have been retained by the department.

10. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A in examination-in-chief wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he denied that he had worked till 2008 with the department. He further denied that w.e.f. 1998 to 2008 he used to come to work casually. He also denied that he had been engaged for seasonal forestry work. He denied that after passing the order from the Hon'ble High Court, the department had written three letters to report for duty which he refused to accept. He further denied that w.e.f. 1998 to 2008, he had not completed 240 days in any year.

11. On the contrary, the respondents examined three RWs. RW-1 has stated that the services of petitioner Shri Rati Ram had been engaged in the year, 1998 for seasonal work as labourer and in the month of October, the petitioner had worked for 31 days with him. The petitioner had never worked for 240 days with him till 2001, who came to work casually and he was never terminated by the department. The petitioner had not reported for work in the years 2002 and 2003. In cross-examination, he admitted that the Guard has no power to engage the daily wage worker. He admitted that the petitioner had worked for more than 240 days in the year, 1999. He denied that the petitioner had worked continuously till 2003.

12. Shri Fateh Singh, Forest Range Officer has appeared into the witness box as RW-2 and tendered his affidavit Ex. RW-1/A in examination-in-chief wherein he reiterated almost all the averments as stated in reply. He also tendered in evidence mandays chart of the petitioner Ex. RW-1/B, copy of letter dated 26.11.2011 Ex. RW-1/C, letter dated 27.11.2011 Ex. RW-1/D, letter dated 20.12.2011 Ex. RW-1/E and copy of notification dated 14.12.1995 Ex. RW-1/F. In cross-examination, he denied that the petitioner was engaged in Jan., 1999 on daily wage basis at Loja Manal Beat, Forest Range Shillai and he worked continuously till 31.3.2011. He further denied that the mandays chart Ex. RW-1/B has not been prepared on the basis of record.

13. RW-3 Shri Basti Ram has tendered his affidavit Ex. RW-2/A in examination in-chief wherein he has stated that he remained as forest guard in loza-manal beat in shillai range from the year 1995 to 2003 and the petitioner had worked with the department under different beats. The Deputy Ranger of Rohnat Block had handed over him the letter (notice) to the petitioner regarding calling him back on work on different dates during the year, 2011-12 which were duly delivered to him on his home address but the petitioner refused to accept the same and as such the petitioner himself has refused to work with the department and used to abandon the job at his own sweet will. He also tendered in evidence authority letter Ex. RW-1/B and copies of letters dated 21.12.2011 Ex. RW-2/C and 5.1.2011 Ex. RW-2/D. In cross-examination, he admitted that there are many houses situated near the house of the petitioner and he had not obtained the signatures of any witness on the letters Ex. RW-2/C and Ex. RW-2/D. He further admitted that now days the work is being taken on bill basis and the attendance of the workers is not marked on muster roll.

14. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that initially the petitioner was engaged as beldar on daily wages basis by the respondent in the year 1998 as is evident from the mandays chart Ex. RW-1/B. The perusal of the mandays chart shows that in the year, 1998 the petitioner had worked for 31 days, 225 days in the year, 1999, 202 days in 2000, 116 days in 2001, 121 days in 2004, 222 days in 2005, 216 days in 2006, 107 days in 2007 and 41 days in 2008. Its perusal further goes to show that the petitioner had not worked even for a single day in the years 2002 and 2003. From the mandays chart Ex. RW-1/B, it is abundantly clear that the petitioner has not worked for 240 days in a year preceding his termination. There is no material on record which could show that the petitioner has completed 240 working days in twelve calendar months preceding his termination. Not only this, the petitioner had also worked with the respondent on bill basis in the month of March, 2011 but he had failed to establish on record that he had completed 240 working days in twelve calendar year preceding his termination. In ***2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others*** , the Hon'ble Supreme Court has held as under:

> ***"The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."***

15. In ***AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh, the*** Hon'ble Supreme Court has held that:--

> ***"Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated."***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. From the perusal of mandays chart, Ex. RW-1/B, it is abundantly clear that the petitioner had not completed 240 working days in the calendar year preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

16. Thus, having regard to the entire evidence on record and on the strength of the above cited rulings, it can safely be concluded that the petitioner has failed to prove on record that he has completed 240 working days in twelve calendar months preceding his termination as it was incumbent upon the petitioner to prove this necessary ingredient that he had completed 240 working days in twelve calendar months preceding his termination.

17. Now adverting to the other aspects of the case, the petitioner has categorically stated as PW-1 that his services had been terminated by the respondents in an illegal manner without following the mandatory provisions of the Act. The learned counsel for the petitioner also contended that neither any notice was issued to the petitioner by the respondents for his alleged abandonment from duties nor any enquiry was held, therefore, it cannot be said that the petitioner had abandoned his job and as such the termination of the services of the petitioner is in violation of the provisions of the Act. However, I am not inclined to accept this contention of the learned counsel for the petitioner in view of the overwhelming evidence on record which goes to show that the services of the petitioner had not been terminated by the respondents rather he himself had abandoned his job. The respondents had issued letters to the petitioner to resume his duties but despite that he had failed to resume his duties, his such conduct clearly speaks that he himself had abandoned his job and his case would not fall within the definition of retrenchment as such there is no question of violation of any provision of the Act.

18. The learned counsel of the petitioner also contended that at the time of the termination of the petitioner, the respondents had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondents as such the respondents had violated the principles of "last come first go". However, except for the bald statement of the petitioner by way of affidavit Ex. PW-1/A, no other evidence has been led by him to prove that the persons junior to him have been retained by the respondents. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

19. Thus, in view of the law laid down (supra) and my foregoing discussion, I have no hesitation in holding that time to time termination of the services of the petitioner during the year, 2004 to 2007 and finally in March/April 2008 by the respondents without following the provisions of the Act is not illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondents and against the petitioner.

Issue no.2.

20. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Relief.

As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondents and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 12th day of April, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

18.4.2016.

Present: None for the petitioner.
Shri R.K Khidtta, Advocate for respondent.

Case called twice but none appeared on behalf of the petitioner union despite having been served for today. It is 10:50 AM. Be called again.

(SUSHIL KUKREJA),
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for the petitioner.
Shri R.K Khidtta, Advocate for respondent.

It is 12:55 PM case called again but none appeared on behalf of the petitioner union. Be called after lunch.

(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present: None for the petitioner.
Shri R.K Khidtta, Advocate for respondent.

It is 3:25 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner union despite having been duly served for today as per the AD received back. Since, the petitioner has failed to appear before this Court despite having been duly served and to file claim petition which shows that the petitioner union is not interested to pursue his claim arising out of the reference which has been sent by the appropriate government to this Court for adjudication, hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever available on file. The reference sent by the appropriate government for adjudication is as under:

> "**Whether non-payment of wages by the Assistant Manager (Civil) M/s Sai Engineering Foundation Shimla, Mini Hydro Project (5MW) Camp Office Dhamwari, District Shimla, HP to their all workers w.e.f. 18.1.2013 to 20.3.2013 on account of stoppage of work due to heavy snow-fall, is legal and justified? If not, what monetary and other benefits the aggrieved workers are entitled to from the above employer (s)/ Management?"**

In the absence of any claim petition and evidence on behalf of petitioner union, it cannot be held that the non-payment of wages by the Assistant Manager (Civil) M/s Sai Engineering Foundation Shimla, Mini Hydro Project (5MW) Camp Office Dhamwari, District Shimla, HP to their all workers w.e.f. 18.1.2013 to 20.3.2013 on account of stoppage of work due to heavy snow-fall, is illegal and unjustified. Hence, the reference is answered against the petitioner union and the

award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced: **(SUSHIL KUKREJA)**
18.4.2016. Presiding Judge,
Labour Court, Shimla.

19.4.2016.
Present: Shri R.K Khidtta, Advocate for petitioner.
Shri Rajeev Sharma, Advocate for respondent.

Today, also no claim petition has been filed on behalf of the petitioner. It may be pertinent to mention here that this case is being listed for filing of claim since 26.9.2015 and various opportunities have been afforded to the petitioner to file claim but the same has not been filed. Since, the petitioner has failed to file any claim despite opportunities, hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever available on the file. The following reference has been received from the appropriate government for adjudication:

> "**Whether termination of the services of Shri Vikas Thakur S/o Shri Ashok Kumar, VPO Baddi, Ward No. 1, Baddi, District Solan, HP during May-June, 2014 by the Employer/General Manager M/s Auro Dyeing, Sai Road Baddi, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief of reinstatement, compensation and other service benefits the above aggrieved workman is entitled to from the above employer/management?"**

As per reference received from the appropriate government, the petitioner has alleged his termination during May-June, 2014 by the respondent i.e the Employer/General Manager M/s Auro Dyeing, Sai Road Baddi, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 to be illegal and unjustified but the petitioner has failed to file any claim in support thereof. Moreover, the petitioner has also failed to lead any evidence before this Court in order to show that he was illegally terminated by the respondent. Hence, in the absence of any claim petition/ evidence on record, the reference is answered against the petitioner. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
19.4.2016.

(SUSHIL KUKREJA),
Presiding Judge
Labour Court, Shimla.

23.4.2016.
Present: None for the petitioner.
Shri Balwant Thakur, Advocate for respondent.

Case called twice but none appeared on behalf of the petitioner. It is 10:50 AM. Be called again.

(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for the petitioner.

Shri Balwant Thakur, Advocate for respondent.

It is 12:55 PM case called again but none appeared on behalf of the petitioner. Be called after lunch.

(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present: None for the petitioner.
Shri Balwant Thakur, Advocate for respondent.

It is 3:25 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner. For today, this case has been listed for filing of rejoinder and framing of issues but none appeared on behalf of the petitioner despite the fact that last opportunity was granted in this respect. Since, the petitioner has failed to appear before this Court and to file rejoinder, it shows that the petitioner is not interested to pursue his claim arising out of the reference which has been sent by the appropriate government to this Court for adjudication. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever available on file. The reference sent by the appropriate government for adjudication is as under:

> "**Whether termination of the services of Shri Arun Kumar S/o Shri Gargan Singh R/o Village & P.O Daro Daria, Tehsil Pachhad, District Sirmour, HP, who was employed as mess helper w.e.f. 15.4.2011 by the Registrar, Dr. Y.S Parmar University of Horticulture and Forestry Nauni District Solan, HP without complying the provisions of the Industrial Disputes Act 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benftis and from which date the above worker is entitled to from the above employer?"**

In the absence of any evidence/material on behalf of petitioner, it cannot be held that the termination of the services of the petitioner w.e.f. 15.4.2011 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947, is illegal and unjustified. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
23.4.2016.

(SUSHIL KUKREJA)
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUMLABOUR COURT, SHIMLA, (H.P).

Ref. No. 15 of 2011.

Instituted on. 13.6.2011.

Decided on 28.4.2016.

Ashwani S/o late Shri Dhruv Chand R/o Village Shehai, P.O Beri, Tehsil Sadar, District Mandi, HP. . .*Petitioner.*

Vs.

M/s SCL Infratech Ltd., Tidong-Hydro Electric Project, Project Office, Hospital Morh, Reckong Peo, HP though its General Manager. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Ms. Shikha Chauhan, Advocate vice csl.
For respondent : Shri Rajesh Thakur, Advocate vice csl.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of the services of Shri Ashwani (welder) C/o CITU Office near District Hospital Reckong Peo, District Kinnaur, HP by the management of M/s **SCL Infratech Ltd., Tidong-Hydro Electric Project, Kinnaur District Kinnaur, HP w.e.f. 13.4.2010 without following the provisions of the Industrial Disputes Act, 1947 as alleged by the above named workman is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned management?"**

2. Briefly, the case of the petitioner is that he was appointed as Welder by the respondent in the month of June, 2009 on monthly salary of ` 6,000/- and served as such almost ten months and has completed more than 120 days as per section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). Even, the petitioner had worked with the respondent for 12 hours in a day but he was not paid over-time charges and his services had been terminated w.e.f. 13.4.2010 without giving any prior notice, reason and opportunity of being heard as per the sections 25-G and 25-H of the Act. It is further stated that juniors to the petitioner/similar situated persons are still working with the respondent. It is further stated that no enquiry, show cause notice and charge sheet was issued to the petitioner before terminating his services. Against this back-drop a prayer has been made for his re-engagement, along-with back-wages and other consequential service benefits.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, concealment of material facts, the petitioner had not approached this Court with clean hands and that the petitioner has failed to fulfill the conditions precedent to his employment. On merits, it has been asserted that according to terms and conditions of the appointment, the petitioner had to complete minimum of one year of uninterrupted service with the respondent but he had not completed more than 120 days as per

section 25-B of the Act. It is denied that the petitioner was working indigenously with full activity and had worked for more than 12 hours in a day. It is averred that the work of the petitioner was not satisfactory as he always shirk from his work and availed unnecessary leaves and remained in the activities which were detrimental to the interest of the respondent and hampered the progress of work. It is further asserted that the petitioner was given a notice before terminating his services as per the rules and regulation of the company and his termination was governed under the clause 6 of the appointment letter. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 20.6.2013.

1. Whether the services of the petitioner w.e.f. 13.4.2010, have been terminated without following the provisions of the Industrial Disputes Act, 1947 in an illegal and unjustified manner as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits, the petitioner is entitled to? . .*OPP.*

3. Whether this petition is not legally maintainable as alleged? . .*OPR.*

4. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1	No.
Issue no. 2	Becomes redundant.
Issue no. 3	No.
Relief.	Reference answered against the petitioner and in favour of respondent per operative part of award.

Reasons for findings.

Issues no.1.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act It was further urged that the termination being stigmatic required a disciplinary enquiry to be held after issuing a show cause notice to the petitioner and giving an opportunity of being heard to defend himself by following the principles of natural justice.

9. On the other hand, learned counsel appearing for the respondent contended that the services of the petitioner had been terminated as per the rules and regulations of the company and his termination was governed under the clause 6 of the appointment letter. He further contended that the order dated 13.4.2010 passed by the competent authority terminating the services of the petitioner is neither stigmatic nor punitive and thus there was no requirement to hold an enquiry

before terminating the services of the petitioner while still on probation and the provisions of section 25-F of the Act are not attracted.

10. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A in examination-in-chief wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he identified his signatures on Ex. R-1 and Ex. R-2. He admitted that he had received the payment as per serial no.2 of Ex. R-3 and he had received all the payments from the respondent of his entire service tenure. He denied that under the state of intoxication, he along-with other workers had quarreled with local people, who made a complaint against him. He admitted that a complaint mark Y had been received by the company. He denied that he was legally terminated by the respondent. He also admitted appointment letter Ex. R-4.

11. PW-2 Shri Ramesh Kumar has stated on oath that he was working a cook in the respondent company w.e.f. October, 2009 and he knows the petitioner who was working with him. The respondent had engaged new persons/juniors for the same work and also after the retrenchment of the petitioner. The work is still available with the respondent. In cross-examination, he denied that the petitioner used to remain on strike for most of time and that the villagers had made a complaint to the Pradhan Gram Panchyat that the petitioner created ruckus under the influence of liquor. He admitted that the nature of the work of the petitioner was not of twelve hours per day.

12. On the contrary, the respondent examined one Shri Twinkle Sirkek, HR as RW-1, who tendered his affidavit Ex, RW-1/A in examination-in-chief wherein he supported all the averments as made in reply including that the petitioner was appointed as welder on 1.6.2009 vide appointment letter Ex. R-4 and he was on probation for six months. The petitioner used to remain busy in illegal activities and his services have been terminated legally as per the terms and conditions of his appointment letter. In cross-examination, he admitted that no FIR or Court case has been filed against the petitioner regarding his alleged illegal activities. The services of the petitioner had been terminated on account of illegal activities and his performance was not satisfactory. He further admitted that no chargesheet was issued and no enquiry was conducted before terminating the services of the petitioner. He admitted that junior persons were working at the time of terminating the services of the petitioner. He denied that the company had not followed the provisions of the Act before terminating the services of the petitioner.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as welder by the respondent company on probation for a period of six months as per appointment letter Ex. R-4 and he joined the respondent company on 13.6.2009. The services of the petitioner were terminated w.e.f. 13.4.2010 vide termination letter dated 13.4.2010 Ex. PW-1/B.

14. The law in relation to the service of an employee on probation is well settled. The termination of the services of the probationer, during or at the end of the period of probation does not affect any of his right, as indeed he has no right to continue to hold the post, save and except after confirmation. However, where a probationer is stigmatized, evil consequences flow. He has to live with the stigma all his life. This stigma would affect his future prospects of finding suitable employment elsewhere. Therefore harmonizing the right of the employer and the right of employee, the service jurisprudence has recognized that where the termination of the services of a probationer visits him with a stigma or is penal or malafide, the probationer would have a right to justify that the cause which has resulted in his being removed is other than relating to his personal capacity, suitability, utility or capacity to work. In **(1999) 2 SCC 21, titled as Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd., and another**, it has been held by the Hon'ble Apex Court that the test applicable to government servants or public sector employees, are equally applicable to labour dispute of such nature relating to the private sector. **In (2010) 2 SCC 623,**

titled as Chaitanya Prakash & another Vs. H. Omkarappa, it has been held by the Hon'ble Supreme Court that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. The relevant portion of the aforesaid judgment is reproduced as under:

> "18. It is no longer res integra that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic…….
>
> 19……..
>
> 20. In Pavanendra Narayan verma v. Sanjay Gandhi PGI of Medical Sciences, this Court had the occasion to determine as to whether the impugned order therein was a letter of termination of services simpliciter or stigmatic termination. After considering various earlier decisions of this court in para 21 of the aforesaid decision it was stated by this Court thus :--
>
> "21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."
>
> 21. In Abhijit Gupta, this Court considered as to what will be the real test to be applied in a situation where an employee is removed by an innocuous order of termination *i.e* whether he is discharged as unsuitable or he is punished for his misconduct. In order to answer the said question, the Court relied and referred to the decision of this Court in Allahabad Bank Officers Assn. V. Allahabad Bank where it is stated thus :--
>
> "14…….As pointed out in this judgment, expressions like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service."

In 2010 LLR 970 case titled as Ram Lal Sharma Vs. Himachal Road Transport Corporation & Anr., it has been held by our own Hon'ble High Court that it is always expected from the employer to keep on reviewing the work and conduct of the employee to assess whether he is suitable to be retained on the post or not during the period of probation. The relevant portion of the aforesaid judgment is reproduced as under:

> "In the present case, the notice has been issued to the petitioner when the employer was not satisfied with his work and conduct. It is always expected from the employer to keep on reviewing the work and conduct of the employee to assess whether he is suitable to be retained on the post or not during the period of probation. The petitioner was on probation for a period of two years which was extended by another one year. It was during the extended period of probation that his work and conduct was looked into by the employer. The fact that it has been mentioned in the notice that few passengers were found ticket less at the time of checking of the bus will not make the termination of the petitioner stigmatic/punitive. This was quoted only to apprise the petitioner that his work and conduct was not satisfactory."

15. From the aforesaid decisions, the legal position which emerges is that where an enquiry is conducted into an alleged misconduct committed by the probationer behind his back and a simple order of termination is passed founded on the report of the enquiry indicting the probationer, the action of the termination of the services of the probationer would be tainted. But

where no findings are arrived at, any enquiry or no enquiry is held but the employer chooses to discontinue the services of an employee against whom complaints are received, it would be a case of complaints motivating the action of termination of the services of the probationer and hence would not be tainted.

16. In the back-drop of the above legal position, now it has to be determined as to whether the order dated 13.4.2010 passed by the competent authority terminating the services of the petitioner is stigmatic/punitive and tainted. The petitioner was on probation and his services have been terminated during the period of probation. No material has been placed on record by the petitioner that his services have been confirmed at any point of time. The appointment of the petitioner was subject to the conditions of appointment stipulated in the appointment letter Ex. R-4. In the terms and condition of the appointment letter it has been clearly mentioned that if the services of the petitioner are not satisfactory, the same shall be terminated without any notice or without assigning any reason. It has further been mentioned in the appointment letter that the petitioner will not enter into any activity which shall be detrimental to the interests of the company or hamper the progress of work and if found defaulter, the services of the petitioner shall be liable for termination without any notice. It has been averred in the reply to the claim petition that the work of the petitioner was not satisfactory as he always shirk from his work and availed unnecessary leave and in addition to this the petitioner always remained in the activities which were detrimental to the interest of the respondent and hampered the progress of work. In the affidavit by way of evidence Ex. RW-1/A, it has been stated that the respondent received a complaint from the local people of the locality against the petitioner and other two co-workers about the quarrelling with the people of the locality in drunken state and despite several warnings the petitioner did not restrain himself from prohibited activities. The petitioner was neither put to notice, nor any chargesheet was issued to him and thereafter, the competent authority passed the order dated 13.4.2010 Ex. PW-1/B terminating the services of the petitioner. At this stage, it will be relevant to reproduce the extract of the termination letter which is as under:

> "Please refer to para-6 of your appointment letter no: Tidong/AL/0057 dated 1.6.2009. Your service hereby stands terminated w.e.f. 13.4.2010. You may collect your full & final dues from the office of the company at REckong Peo on any working day."

A bare perusal of the aforesaid order of termination dated 13.4.2010, would show that it was not passed by way of punishing the petitioner for any misconduct. The misconduct was only a motive and not foundation leading to the termination of the services of the petitioner. In such a situation, it cannot be said that the order dated 13.4.2010, Ex. PW-1/B was stigmatic or punitive in nature. It was only an order of termination simpliciter and no stigma was attached to it and it cannot be regarded as punitive requiring an enquiry into his conduct or attracting the principles of natural justice.

17. Now, the next question which arises for consideration before this Court is as to whether section 25-F of the Act is attracted in the present case. The stand of the respondent is that the petitioner was a probationer and during the period of probation his services could be terminated without any notice or without assigning any reason as stipulated in the appointment letter as such the termination of the petitioner did not amount to retrenchment and provisions contained in section 25-F of the Act are not attracted.

18. In **AIR 1994 Supreme Court 1343 titled as M. Venugopal Vs. Divisional Manager, Life Insurance, Corporation of India, Machilipatnam, Andra Pradesh and another**, the Hon'ble Apex Court had an occasion to consider similar case of termination of probationer and it was held that the employer was entitled to terminate the services of a probationer during the period of probation without any notice. It was further held that the termination of the probationer shall be

deemed to be retrenchment within the meaning of section 2 (oo) of the Act. The relevant portion of the aforesaid judgment reads as under:

> "14. The amendments introduced in Section 48 of the Corporation Act have clearly excluded the provisions of the Industrial Disputes Act so far as they are in conflict with the rules framed under Section 48(2)(cc). The result whereof will be that termination of the service of the appellant shall not be deemed to be a "retrenchment" within the meaning of Section 2(oo) even if sub-section (bb) had not been introduced in the said section. Once Section 2(oo) is not attracted, there is no question of application of Section 25-F on the basis of which the termination of the service of the appellant can be held to be invalid. The termination of the service of the appellant during the period of probation is in terms of the order of appointment read with I Regulation 14 of the Regulations, which shall be deemed to be now Rules under Section 48(2)(cc) of the Corporation Act.
>
> 15. Even under general law, the service of a probationer can be terminated after making an overall assessment of his performance during the period of probation and no notice is required to be given before termination of such service. This aspect has been examined by this Court in the case of The Governing Council of Kidwai Memorial Institute of Oncology, Bangalore v. Dr Pandurang Godwalka where it has been pointed out that if the performance of the employee concerned during the period of probation is not found to be satisfactory on overall assessment, then it is open to the competent authority to terminate his service."

19. In the instant case, the conditions incorporated in the letter of appointment clearly provide for termination of service during the period of probation without any notice and without any reason. Therefore, it can safely be held that in bringing about an end to the services of the petitioner during the period of probation, the respondent was not required to give any notice or to pay any compensation in terms of section 25-F of the Act. The termination of the services of the petitioner did not amount to retrenchment and could not be invalidated for non-compliance of section 25-F of the Act.

20. Thus, in view of the law laid down (supra) and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner w.e.f 13.4.2010 by the respondent is not illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

Issue no. 2.

21. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue No. 3.

22. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the

appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 28th day of April, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUMLABOUR COURT, SHIMLA, (H.P).

Ref. No. 16 of 2011.

Instituted on. 13.6.2011.

Decided on 28.4.2016. Ashok Kumar S/o

Shri Dilip Singh R/o VPO Chaura, Tehsil Nichar, District Kinnaur, HP. . .*Petitioner.*

Vs.

M/s SCL Infratech Ltd., Tidong-Hydro Electric Project, Project Office, Hospital Morh, Reckong Peo, HP though its General Manager. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Ms. Shikha Chauhan, Advocate vice csl.
For respondent : Shri Rajesh Thakur, Advocate vice csl.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of the services of Shri Ashok Kumar (Electrician) C/o CITU Office near District Hospital Reckong Peo, District Kinnaur, HP by the management of M/s **SCL Infratech Ltd., Tidong-Hydro Electric Project, Kinnaur District Kinnaur, HP w.e.f. 13.4.2010 without following the provisions of the Industrial Disputes Act, 1947 as alleged by the above named workman is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned management?"**

2. Briefly, the case of the petitioner is that he was appointed as Electrician by the respondent on 1.7.2009, on monthly salary of ₹ 6,000/- which was lateron reduced to ₹ 5700/- and served as such almost eight months and has completed more than 120 days as per section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). Even, the petitioner had worked with the respondent for 12 hours in a day but he was not paid over-time charges and his services had been terminated w.e.f. 13.4.2010 without giving any prior notice, reason and opportunity of being heard as per the sections 25-G and 25-H of the Act. It is further stated that juniors to the petitioner/similar situated persons are still working with the respondent. It is further stated that no

enquiry, show cause notice and chargesheet was issued to the petitioner before terminating his services. Against this backdrop a prayer has been made for his re-engagement, along-with back-wages and other consequential service benefits.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, concealment of material facts, the petitioner had not approached this Court with clean hands and that the petitioner has failed to fulfill the conditions precedent to his employment. On merits, it has been asserted that according to terms and conditions of the appointment, the petitioner had to complete minimum of one year of uninterrupted service with the respondent but he had not completed more than 120 days as per section 25-B of the Act. It is denied that the petitioner was working indigenously with full activity and had worked for more than 12 hours in a day. It is averred that the work of the petitioner was not satisfactory as he always shirk from his work and availed unnecessary leaves and remained in the activities which were detrimental to the interest of the respondent and hampered the progress of work. It is further asserted that the petitioner was given a notice before terminating his services as per the rules and regulation of the company and his termination was governed under the clause 6 of the appointment letter. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 20.6.2013.

1. Whether the services of the petitioner w.e.f. 13.4.2010, have been terminated without following the provisions of the Industrial Disputes Act, 1947 in an illegal and unjustified manner as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits, the petitioner is entitled to? . .*OPP.*

3. Whether this petition is not legally maintainable as alleged? . .*OPR.*

Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1	No.
Issue no. 2	Becomes redundant.
Issue no. 3	No.
Relief.	Reference answered against the petitioner and in favour of respondent per operative part of award.

Reasons for findings

Issues no.1.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act It was further urged that the termination being stigmatic required a

disciplinary enquiry to be held after issuing a show cause notice to the petitioner and giving an opportunity of being heard to defend himself by following the principles of natural justice.

9. On the other hand, learned counsel appearing for the respondent contended that the services of the petitioner had been terminated as per the rules and regulations of the company and his termination was governed under the clause 6 of the appointment letter. He further contended that the order dated 13.4.2010 passed by the competent authority terminating the services of the petitioner is neither stigmatic nor punitive and thus there was no requirement to hold an enquiry before terminating the services of the petitioner while still on probation and the provisions of section 25-F of the Act are not attracted.

10. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A in examination-in-chief wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he identified his signatures on Ex. R-1 to Ex. R-7. He admitted that he had received the payment as per serial no.3 of Ex. R-8 and he had received all the payments from the respondent of his entire service tenure. He denied that under the state of intoxication, he along-with other workers had quarreled with local people, who made a complaint against him. He admitted that a complaint mark Y had been received by the company. He denied that he was legally terminated by the respondent.

11. PW-2 Shri Ramesh Kumar has stated on oath that he was working a cook in the respondent company w.e.f. October, 2009 and he knows the petitioner who was working with him. The respondent had engaged new persons/juniors for the same work and also after the retrenchment of the petitioner. The work is still available with the respondent. In cross-examination, he denied that the petitioner used to remain on strike for most of time and that the villagers had made a complaint to the Pradhan Gram Panchyat that the petitioner created ruckus under the influence of liquor. He admitted that the nature of the work of the petitioner was not of twelve hours per day.

12. On the contrary, the respondent examined one Shri Twinkle Sirkek, HR as RW-1, who tendered his affidavit Ex, RW-1/A in examination-in-chief wherein he supported all the averments as made in reply including that the petitioner was appointed as welder on 1.7.2009 vide appointment letter Ex. PW-1/C and he was on probation for six months. The petitioner used to remain busy in illegal activities and his services have been terminated legally as per the terms and conditions of his appointment letter. In cross-examination, he admitted that no FIR or Court case has been filed against the petitioner regarding his alleged illegal activities. The services of the petitioner had been terminated on account of illegal activities and his performance was not satisfactory. He further admitted that no chargesheet was issued and no enquiry was conducted before terminating the services of the petitioner. He admitted that junior persons were working at the time of terminating the services of the petitioner. He denied that the company had not followed the provisions of the Act before terminating the services of the petitioner.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as Electrician by the respondent company on probation for a period of six months as per appointment letter Ex. PW-1/C and he joined the respondent company on 1.7.2009. The services of the petitioner were terminated w.e.f. 13.4.2010 vide termination letter dated 13.4.2010 Ex. PW-1/B.

14. The law in relation to the service of an employee on probation is well settled. The termination of the services of the probationer, during or at the end of the period of probation does not affect any of his right, as indeed he has no right to continue to hold the post, save and except after confirmation. However, where a probationer is stigmatized, evil consequences flow. He has to live with the stigma all his life. This stigma would affect his future prospects of finding suitable employment elsewhere. Therefore harmonizing the right of the employer and the right of employee,

the service jurisprudence has recognized that where the termination of the services of a probationer visits him with a stigma or is penal or malafide, the probationer would have a right to justify that the cause which has resulted in his being removed is other than relating to his personal capacity, suitability, utility or capacity to work. In **(1999) 2 SCC 21, titled as Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd., and another**, it has been held by the Hon'ble Apex Court that the test applicable to government servants or public sector employees, are equally applicable to labour dispute of such nature relating to the private sector. **In (2010) 2 SCC 623, titled as Chaitanya Prakash & another Vs. H. Omkarappa**, it has been held by the Hon'ble Supreme Court that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. The relevant portion of the aforesaid judgment is reproduced as under:

"18. It is no longer res integra that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic…….

19……..

20. In Pavanendra Narayan verma v. Sanjay Gandhi PGI of Medical Sciences, this Court had the occasion to determine as to whether the impugned order therein was a letter of termination of services simpliciter or stigmatic termination. After considering various earlier decisions of this court in para 21 of the aforesaid decision it was stated by this Court thus :--

> "21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

21. In Abhijit Gupta, this Court considered as to what will be the real test to be applied in a situation where an employee is removed by an innocuous order of termination *i.e* whether he is discharged as unsuitable or he is punished for his misconduct. In order to answer the said question, the Court relied and referred to the decision of this Court in Allahabad Bank Officers Assn. V. Allahabad Bank where it is stated thus :--

"14…….As pointed out in this judgment, expressions like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service."

In 2010 LLR 970 case titled as Ram Lal Sharma Vs. Himachal Road Transport Corporation & Anr., it has been held by our own Hon'ble High Court that it is always expected from the employer to keep on reviewing the work and conduct of the employee to assess whether he is suitable to be retained on the post or not during the period of probation. The relevant portion of the aforesaid judgment is reproduced as under:

> "In the present case, the notice has been issued to the petitioner when the employer was not satisfied with his work and conduct. It is always expected from the employer to keep on reviewing the work and conduct of the employee to assess whether he is suitable to be retained on the post or not during the period of probation. The petitioner was on probation for a period of two years which was extended by another one year. It was during the extended period of probation that his work and conduct was looked into by the employer.

> The fact that it has been mentioned in the notice that few passengers were found ticket less at the time of checking of the bus will not make the termination of the petitioner stigmatic/punitive. This was quoted only to apprise the petitioner that his work and conduct was not satisfactory."

15. From the aforesaid decisions, the legal position which emerges is that where an enquiry is conducted into an alleged misconduct committed by the probationer behind his back and a simple order of termination is passed founded on the report of the enquiry indicting the probationer, the action of the termination of the services of the probationer would be tainted. But where no findings are arrived at, any enquiry or no enquiry is held but the employer chooses to discontinue the services of an employee against whom complaints are received, it would be a case of complaints motivating the action of termination of the services of the probationer and hence would not be tainted.

16. In the back-drop of the above legal position, now it has to be determined as to whether the order dated 13.4.2010 passed by the competent authority terminating the services of the petitioner is stigmatic/punitive and tainted. The petitioner was on probation and his services have been terminated during the period of probation. No material has been placed on record by the petitioner that his services have been confirmed at any point of time. The appointment of the petitioner was subject to the conditions of appointment stipulated in the appointment letter Ex. PW-1/C. In the terms and condition of the appointment letter it has been clearly mentioned that if the services of the petitioner are not satisfactory, the same shall be terminated without any notice or without assigning any reason. It has further been mentioned in the appointment letter that the petitioner will not enter into any activity which shall be detrimental to the interests of the company or hamper the progress of work and if found defaulter, the services of the petitioner shall be liable for termination without any notice. It has been averred in the reply to the claim petition that the work of the petitioner was not satisfactory as he always shirk from his work and availed unnecessary leave and in addition to this the petitioner always remained in the activities which were detrimental to the interest of the respondent and hampered the progress of work. In the affidavit by way of evidence Ex. RW-1/A, it has been stated that the respondent received a complaint from the local people of the locality against the petitioner and other two co-workers about the quarrelling with the people of the locality in drunken state and despite several warnings the petitioner did not restrain himself from prohibited activities. The petitioner was neither put to notice, nor any chargesheet was issued to him and thereafter, the competent authority passed the order dated 13.4.2010 Ex. PW-1/B terminating the services of the petitioner. At this stage, it will be relevant to reproduce the extract of the termination letter which is as under:

> "Please refer to para-6 of your appointment letter no: Tidong/AL/0040 dated 1.7.2009. Your service hereby stands terminated w.e.f. 13.4.2010. You may collect your full & final dues from the office of the company at Reckong Peo on any working day."

A bare perusal of the aforesaid order of termination dated 13.4.2010, would show that it was not passed by way of punishing the petitioner for any misconduct. The misconduct was only a motive and not foundation leading to the termination of the services of the petitioner. In such a situation, it cannot be said that the order dated 13.4.2010, Ex. PW-1/B was stigmatic or punitive in nature. It was only an order of termination simpliciter and no stigma was attached to it and it cannot be regarded as punitive requiring an enquiry into his conduct or attracting the principles of natural justice.

17. Now, the next question which arises for consideration before this Court is as to whether section 25-F of the Act is attracted in the present case. The stand of the respondent is that the petitioner was a probationer and during the period of probation his services could be terminated

without any notice or without assigning any reason as stipulated in the appointment letter as such the termination of the petitioner did not amount to retrenchment and provisions contained in section 25-F of the Act are not attracted.

18. In **AIR 1994 Supreme Court 1343 titled as M. Venugopal Vs. Divisional Manager, Life Insurance, Corporation of India, Machilipatnam, Andra Pradesh and another**, the Hon'ble Apex Court had an occasion to consider similar case of termination of probationer and it was held that the employer was entitled to terminate the services of a probationer during the period of probation without any notice. It was further held that the termination of the probationer shall be deemed to be retrenchment within the meaning of section 2 (oo) of the Act. The relevant portion of the aforesaid judgment reads as under:

> "14. The amendments introduced in Section 48 of the Corporation Act have clearly excluded the provisions of the Industrial Disputes Act so far as they are in conflict with the rules framed under Section 48(2)(cc). The result whereof will be that termination of the service of the appellant shall not be deemed to be a "retrenchment" within the meaning of Section 2(oo) even if sub-section (bb) had not been introduced in the said section. Once Section 2(oo) is not attracted, there is no question of application of Section 25-F on the basis of which the termination of the service of the appellant can be held to be invalid. The termination of the service of the appellant during the period of probation is in terms of the order of appointment read with I Regulation 14 of the Regulations, which shall be deemed to be now Rules under Section 48(2)(cc) of the Corporation Act.
>
> 15. Even under general law, the service of a probationer can be terminated after making an overall assessment of his performance during the period of probation and no notice is required to be given before termination of such service. This aspect has been examined by this Court in the case of The Governing Council of Kidwai Memorial Institute of Oncology, Bangalore v. Dr Pandurang Godwalka where it has been pointed out that if the performance of the employee concerned during the period of probation is not found to be satisfactory on overall assessment, then it is open to the competent authority to terminate his service."

19. In the instant case, the conditions incorporated in the letter of appointment clearly provide for termination of service during the period of probation without any notice and without any reason. Therefore, it can safely be held that in bringing about an end to the services of the petitioner during the period of probation, the respondent was not required to give any notice or to pay any compensation in terms of section 25-F of the Act. The termination of the services of the petitioner did not amount to retrenchment and could not be invalidated for non-compliance of section 25-F of the Act.

20. Thus, in view of the law laid down (supra) and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner w.e.f 13.4.2010 by the respondent is not illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

Issue no.2.

21. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue No.3.

22. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is

perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 28th day of April, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUMLABOUR COURT, SHIMLA, (H.P).

Ref. No. 17 of 2011.

Instituted on. 13.6.2011.

Decided on 28.4.2016.

Sami Ram S/o late Shri Bhogi Ram R/o VPO Urtoo, Tehsil Nirmand, District Kullu, HP.
. .*Petitioner.*

Vs.

M/s SCL Infratech Ltd., Tidong-Hydro Electric Project, Project Office, Hospital Morh, Reckong Peo, HP though its General Manager. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Ms. Shikha Chauhan, Advocate vice csl.
For respondent : Shri Rajesh Thakur, Advocate vice csl.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of the services of Shri Sami Ram (welder) C/o CITU Office near District Hospital Reckong Peo, District Kinnaur, HP by the management of M/s **SCL Infratech Ltd., Tidong-Hydro Electric Project, Kinnaur District Kinnaur, HP w.e.f. 13.4.2010 without following the provisions of the Industrial Disputes Act, 1947 as alleged by the above named workman is legal and justified? If not, to what back**

wages, service benefits and relief the above named worker is entitled to from the concerned management?"

2. Briefly, the case of the petitioner is that he was appointed as Welder by the respondent on 21.10.2009, on monthly salary of ₹ 6,000/- and served as such almost six months and has completed more than 120 days as per section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as Act). Even, the petitioner had worked with the respondent for 12 hours in a day but he was not paid over-time charges and his services had been terminated w.e.f. 13.4.2010 without giving any prior notice, reason and opportunity of being heard as per the sections 25-G and 25-H of the Act. It is further stated that juniors to the petitioner/similar situated persons are still working with the respondent. It is further stated that no enquiry, show cause notice and chargesheet was issued to the petitioner before terminating his services. Against this back-drop a prayer has been made for his reengagement, along-with back-wages and other consequential service benefits.

3. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, concealment of material facts, the petitioner had not approached this Court with clean hands and that the petitioner has failed to fulfill the conditions precedent to his employment. On merits, it has been asserted that according to terms and conditions of the appointment, the petitioner had to complete minimum of one year of uninterrupted service with the respondent but he had not completed more than 120 days as per section 25-B of the Act. It is denied that the petitioner was working indigenously with full activity and had worked for more than 12 hours in a day. It is averred that the work of the petitioner was not satisfactory as he always shirk from his work and availed unnecessary leaves and remained in the activities which were detrimental to the interest of the respondent and hampered the progress of work. It is further asserted that the petitioner was given a notice before terminating his services as per the rules and regulation of the company and his termination was governed under the clause 6 of the appointment letter. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondent.

5. Pleadings of the parties gave rise to the following issues which were struck on 20.6.2013.

1. Whether the services of the petitioner w.e.f. 13.4.2010, have been terminated without following the provisions of the Industrial Disputes Act, 1947 in an illegal and unjustified manner as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what service benefits, the petitioner is entitled to? . .*OPP.*

3. Whether this petition is not legally maintainable as alleged? . .*OPR.*

3. Relief.

6. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 No.
Issue no. 2 Becomes redundant.

Issue no. 3 No.

Relief. Reference answered against the petitioner and in favour of respondent per operative part of award.

Reasons for findings

Issues no.1.

8. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act It was further urged that the termination being stigmatic required a disciplinary enquiry to be held after issuing a show cause notice to the petitioner and giving an opportunity of being heard to defend himself by following the principles of natural justice.

9. On the other hand, learned counsel appearing for the respondent contended that the services of the petitioner had been terminated as per the rules and regulations of the company and his termination was governed under the clause 6 of the appointment letter. He further contended that the order dated 13.4.2010 passed by the competent authority terminating the services of the petitioner is neither stigmatic nor punitive and thus there was no requirement to hold an enquiry before terminating the services of the petitioner while still on probation and the provisions of section 25-F of the Act are not attracted.

10. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PW-1/A in examination-in-chief wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he identified his signatures on Ex. R-1 and Ex. R-2. He admitted that Ex. R-3 is the appointment letter. He admitted that he had received the payment as per serial no.1 of Ex. R-4 and he had received all the payments from the respondent of his entire service tenure. He further admitted that warning letter Ex. R-5 was received by him. He denied that under the state of intoxication, he along-with other workers had quarreled with local people, who made a complaint against him. He admitted that a complaint mark Y had been received by the company. He denied that he was legally terminated by the respondent.

11. PW-2 Shri Ramesh Kumar has stated on oath that he was working a cook in the respondent company w.e.f. October, 2009 and he knows the petitioner who was working with him. The respondent had engaged new persons/juniors for the same work and also after the retrenchment of the petitioner. The work is still available with the respondent. In cross-examination, he denied that the petitioner used to remain on strike for most of time and that the villagers had made a complaint to the Pradhan Gram Panchyat that the petitioner created ruckus under the influence of liquor. He admitted that the nature of the work of the petitioner was not of twelve hours per day.

12. On the contrary, the respondent examined one Shri Twinkle Sirkek, HR as RW-1, who tendered his affidavit Ex, RW-1/A in examination-in-chief wherein he supported all the averments as made in reply including that the petitioner was appointed as welder on 1.6.2009 vide appointment letter Ex. R-3 and he was on probation for six months. The petitioner used to remain busy in illegal activities and his services have been terminated legally as per the terms and conditions of his appointment letter. In cross-examination, he admitted that no FIR or Court case has been filed against the petitioner regarding his alleged illegal activities. The services of the petitioner had been terminated on account of illegal activities and his performance was not satisfactory. He further admitted that no chargesheet was issued and no enquiry was conducted before terminating the services of the petitioner. He admitted that junior persons were working at the time of terminating the services of the petitioner. He denied that the company had not followed the provisions of the Act before terminating the services of the petitioner.

13. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as welder by the respondent company on probation for a period of six months as per appointment letter Ex. R-3 and he joined the respondent company on 1.12.2009. The services of the petitioner were terminated w.e.f. 13.4.2010 vide termination letter dated 13.4.2010 Ex. PW-1/B.

14. The law in relation to the service of an employee on probation is well settled. The termination of the services of the probationer, during or at the end of the period of probation does not affect any of his right, as indeed he has no right to continue to hold the post, save and except after confirmation. However, where a probationer is stigmatized, evil consequences flow. He has to live with the stigma all his life. This stigma would affect his future prospects of finding suitable employment elsewhere. Therefore harmonizing the right of the employer and the right of employee, the service jurisprudence has recognized that where the termination of the services of a probationer visits him with a stigma or is penal or malafide, the probationer would have a right to justify that the cause which has resulted in his being removed is other than relating to his personal capacity, suitability, utility or capacity to work. In **(1999) 2 SCC 21, titled as Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd., and another**, it has been held by the Hon'ble Apex Court that the test applicable to government servants or public sector employees, are equally applicable to labour dispute of such nature relating to the private sector. **In (2010) 2 SCC 623, titled as Chaitanya Prakash & another Vs. H. Omkarappa**, it has been held by the Hon'ble Supreme Court that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. The relevant portion of the aforesaid judgment is reproduced as under:

> "18. It is no longer res integra that even if an order of termination refers to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic…….
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20. In Pavanendra Narayan verma v. Sanjay Gandhi PGI of Medical Sciences, this Court had the occasion to determine as to whether the impugned order therein was a letter of termination of services simpliciter or stigmatic termination. After considering various earlier decisions of this court in para 21 of the aforesaid decision it was stated by this Court thus :--

> "21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

21. In Abhijit Gupta, this Court considered as to what will be the real test to be applied in a situation where an employee is removed by an innocuous order of termination i.e whether he is discharged as unsuitable or he is punished for his misconduct. In order to answer the said question, the Court relied and referred to the decision of this Court in Allahabad Bank Officers Assn. V. Allahabad Bank where it is stated thus :--

> "14…….As pointed out in this judgment, expressions like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee would not be sufficient to attract the charge that they are stigmatic and intended to dismiss the employee from service."

In 2010 LLR 970 case titled as Ram Lal Sharma Vs. Himachal Road Transport Corporation & Anr., it has been held by our own Hon'ble High Court that it is always expected from the employer to keep on reviewing the work and conduct of the employee to assess whether he is suitable to be retained on the post or not during the period of probation. The relevant portion of the aforesaid judgment is reproduced as under:

> "In the present case, the notice has been issued to the petitioner when the employer was not satisfied with his work and conduct. It is always expected from the employer to keep on reviewing the work and conduct of the employee to assess whether he is suitable to be retained on the post or not during the period of probation. The petitioner was on probation for a period of two years which was extended by another one year. It was during the extended period of probation that his work and conduct was looked into by the employer. The fact that it has been mentioned in the notice that few passengers were found ticket less at the time of checking of the bus will not make the termination of the petitioner stigmatic/punitive. This was quoted only to apprise the petitioner that his work and conduct was not satisfactory."

15. From the aforesaid decisions, the legal position which emerges is that where an enquiry is conducted into an alleged misconduct committed by the probationer behind his back and a simple order of termination is passed founded on the report of the enquiry indicting the probationer, the action of the termination of the services of the probationer would be tainted. But where no findings are arrived at, any enquiry or no enquiry is held but the employer chooses to discontinue the services of an employee against whom complaints are received, it would be a case of complaints motivating the action of termination of the services of the probationer and hence would not be tainted.

16. In the back-drop of the above legal position, now it has to be determined as to whether the order dated 13.4.2010 passed by the competent authority terminating the services of the petitioner is stigmatic/punitive and tainted. The petitioner was on probation and his services have been terminated during the period of probation. No material has been placed on record by the petitioner that his services have been confirmed at any point of time. The appointment of the petitioner was subject to the conditions of appointment stipulated in the appointment letter Ex. R-3. In the terms and condition of the appointment letter it has been clearly mentioned that if the services of the petitioner are not satisfactory, the same shall be terminated without any notice or without assigning any reason. It has further been mentioned in the appointment letter that the petitioner will not enter into any activity which shall be detrimental to the interests of the company or hamper the progress of work and if found defaulter, the services of the petitioner shall be liable for termination without any notice. It has been averred in the reply to the claim petition that the work of the petitioner was not satisfactory as he always shirk from his work and availed unnecessary leave and in addition to this the petitioner always remained in the activities which were detrimental to the interest of the respondent and hampered the progress of work. In the affidavit by way of evidence Ex. RW-1/A, it has been stated that the respondent received a complaint from the local people of the locality against the petitioner and other two co-workers about the quarrelling with the people of the locality in drunken state and despite several warnings the petitioner did not restrain himself from prohibited activities. On receipt of the complaint, a warning letter Ex. R-5, was issued to the petitioner. The petitioner was neither put to notice, nor any chargesheet was issued to him and thereafter, the competent authority passed the order dated 13.4.2010 Ex. PW-1/B terminating the services of the petitioner. At this stage, it will be relevant to reproduce the extract of the termination letter which is as under:

"Your service is no longer required by the company w.e.f. 13.4.2010. So you may collect your full and final dues from the office of the company at Reckong Peo on any working days."

A bare perusal of the aforesaid order of termination dated 13.4.2010, would show that it was not passed by way of punishing the petitioner for any misconduct. The misconduct was only a motive and not foundation leading to the termination of the services of the petitioner. In such a situation, it cannot be said that the order dated 13.4.2010, Ex. PW-1/B was stigmatic or punitive in nature. It was only an order of termination simpliciter and no stigma was attached to it and it cannot be regarded as punitive requiring an enquiry into his conduct or attracting the principles of natural justice.

17. Now, the next question which arises for consideration before this Court is as to whether section 25-F of the Act is attracted in the present case. The stand of the respondent is that the petitioner was a probationer and during the period of probation his services could be terminated without any notice or without assigning any reason as stipulated in the appointment letter as such the termination of the petitioner did not amount to retrenchment and provisions contained in section 25-F of the Act are not attracted.

18. In **AIR 1994 Supreme Court 1343 titled as M. Venugopal Vs. Divisional Manager, Life Insurance, Corporation of India, Machilipatnam, Andra Pradesh and another**, the Hon'ble Apex Court had an occasion to consider similar case of termination of probationer and it was held that the employer was entitled to terminate the services of a probationer during the period of probation without any notice. It was further held that the termination of the probationer shall be deemed to be retrenchment within the meaning of section 2 (oo) of the Act. The relevant portion of the aforesaid judgment reads as under:

"14. The amendments introduced in Section 48 of the Corporation Act have clearly excluded the provisions of the Industrial Disputes Act so far as they are in conflict with the rules framed under Section 48(2)(cc). The result whereof will be that termination of the service of the appellant shall not be deemed to be a "retrenchment" within the meaning of Section 2(oo) even if sub-section (bb) had not been introduced in the said section. Once Section 2(oo) is not attracted, there is no question of application of Section 25-F on the basis of which the termination of the service of the appellant can be held to be invalid. The termination of the service of the appellant during the period of probation is in terms of the order of appointment read with I Regulation 14 of the Regulations, which shall be deemed to be now Rules under Section 48(2)(cc) of the Corporation Act.

15. Even under general law, the service of a probationer can be terminated after making an overall assessment of his performance during the period of probation and no notice is required to be given before termination of such service. This aspect has been examined by this Court in the case of The Governing Council of Kidwai Memorial Institute of Oncology, Bangalore v. Dr Pandurang Godwalka where it has been pointed out that if the performance of the employee concerned during the period of probation is not found to be satisfactory on overall assessment, then it is open to the competent authority to terminate his service."

19. In the instant case, the conditions incorporated in the letter of appointment clearly provide for termination of service during the period of probation without any notice and without any reason. Therefore, it can safely be held that in bringing about an end to the services of the petitioner during the period of probation, the respondent was not required to give any notice or to pay any compensation in terms of section 25-F of the Act. The termination of the services of the petitioner did not amount to retrenchment and could not be invalidated for non-compliance of section 25-F of the Act.

20. Thus, in view of the law laid down (supra) and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner w.e.f 13.4.2010 by the respondent is not illegal and unjustified. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner.

Issue no.2.

21. Since, the petitioner has failed to prove issue no.1 above, this issue becomes redundant.

Issue No.3.

22. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 28th day of April, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNALCUM-LABOUR COURT, SHIMLA

Ref. No. 72 of 2009.

Instituted on.17.8.2009.

Decided on. 29.4.2016.

Pawan Kumar S/o Shri Romesh Chand R/o Roshan Building, Totu Chowk, P.O Totu, Shimla 171001, HP. . .*Petitioner.*

VS.

1. State of Himachal Pradesh through FC-cum-Secretary (Agriculture) to the government of Himachal Pradesh, Shimla.

2. The Director of Agriculture, Himachal Pradesh Bioleauganj, Shimla 171005.

3. The Sub Divisional Soil Conservation Officer, Arki District Solan, HP.

4. The Agriculture Development Officer, Soil Conservation Section Kandaghat, Solan, HP. . .*Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Sanjeev Sharma, Advocate.
For respondents : Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government to this Court for adjudication:

"Whether termination of the services of Shri Pawan Nag S/o Shri Romesh Nag, daily wage surveyor w.e.f. 3.12.2001 by the Sub Divisional Conservation Officer, Arki District Solan, HP without following the provisions of Industrial Disputes Act, 1947 is justified or not? If not, what relief of service and other benefits the worker is entitled to?"

2. Briefly, the case of the petitioner is that he was initially engaged as daily waged surveyor by the respondents in the month of September, 1991 at the office of Assistant Soil Conservator, Dehra District Kangra and thereafter w.e.f. December, 1992 to July, 1993, he worked as surveyor-cum-supervisor in the Directorate of Agriculture, Shimla and then w.e.f. December, 1994 to July, 1994, he also worked in the office of Assistant Soil Conservator, Arki, District Solan. Thereafter, the petitioner also worked as daily paid surveyor w.e.f. August, 1994 to March, 1997 in the office of Deputy Director of Agriculture, Solan and from April, 1997 to 23rd November, 2000, he discharged his duties with the Assistant Soil Conservator, Arki and there were no breaks in his service. It is further stated that during Feb., 2000 the respondents started the process of recruitment to the post of surveyor which were lying vacant in the department of agriculture and the petitioner was legitimately expecting his regularization but the respondents instead of regularizing his services and other similarly situated persons invited the names of the persons from the various employment exchanges and thereafter vide letter dated 20.4.2000, the respondent no.2 notified all the Regional Officers/Employment Exchanges that the post will be filled up on batch wise basis and even the petitioner had also submitted a representation dated 23.6.2000 to the respondent no.2 requesting therein for his regularization but his services have been terminated vide letter dated 24.11.2000 and feeling aggrieved and dis-satisfied with the termination, he invoked the jurisdiction of HP Administrative Tribunal and filed OA no. 3917 of 2000 which was allowed on 19.9.2001 and the respondents were directed to reengage the services of the petitioner, however, wages for the period of disengagement to reengagement were not granted but the period in between this was granted to be counted towards seniority etc. and thereafter vide letter dated 3rd December, 2001, the services of the petitioner were again terminated. Then, the petitioner again approached the Administrative Tribunal and filed OA no. 509/2002 which was rejected for want of jurisdiction and thereafter the petitioner preferred a Civil Writ Petition no. 791 of 2004 before the Hon'ble High Court which was also dismissed by the Hon'ble High Court by clarifying that if the petitioner approaches the State Government for making a reference under the industrial disputes within a period of two months, the same shall be considered in accordance with law. Then, the petitioner raised a demand notice before the Labour Officer, Shimla but the conciliation proceedings failed and the appropriate government has made the reference to this Court. It is also stated that being a workman, the petitioner is entitled to all the protection available to him under the Industrial Disputes Act, 1947 (hereinafter referred to as Act) and as such his services can be terminated only after following the provisions of sections 25-K, L and N of the Act which govern the condition

precedent for retrenchment of workman and even no retrenchment compensation had been paid to him. No notice under section 25-N of the Act was given to the petitioner before terminating his services. Against this back-ground a prayer has been made for his re-instatement along-with all consequential service benefits.

3. By filing reply, respondents have contested the claim of the petitioner, wherein preliminary objections had been taken regarding maintainability, barred by law of limitation and the petitioner was engaged on temporary basis under project. On merits, it has been asserted that vide report of Shri Daya Chand Peon dated 14.9.2001 the residence of the petitioner was found locked and thereafter the Bank Draft amounting to Rs. 6150/- was sent through post in lieu of retrenchment compensation but the same was undelivered with the report that the petitioner had left the house. It is further asserted that w.e.f. 1.9.1991, the petitioner was engaged as daily waged on muster roll as per the requirement of labour to implement the particular project/scheme i.e USAID Dehra and worked only for 71 days till 30.11.1991 and the Project was closed in the month of September, 1992 and thereafter, he was re-engaged by the department under different schemes and for various works temporarily as appended below:

Sr. No.	Designation	Name of Scheme	Period	Total days.
1.	Surveyor	SMF Scheme under ADO Kangra	1.12.1991 to 31.12.1991	20
2.	Daily paid labourer	TIS Sanan under SDSCO Shimla	7.12.1992 to 31.12.1992	25.
3.	Daily paid labourer	TIS Sanan under SDCO Shimla	1.1.1993 to 31.1.1993	25
4.	Stone dreiser	TIS JAtoli under SDSCO Shimla	1.5.1993 to 20.5.1993	20
5.	Supervisor	T&E Project under SDSCO Arki	7.6.1993 to 31.12.1993	161
6.	Supervisor	T& E Project	1.1.1994 to 30.6.1994	151
7.	Supervisor	NWDPRA Jhaja Sikori	1.8.94 to 31.12.94	142
8.	Supervisor	NWDPRA Kandaghat	1.1.95 to 31.3.95 & 1.10.95 to30.11.95	150
9.	Supervisor	NWDPRA Kandaghat	1.2.96 to 31.12.96	332
10.	Supervisor	NWDPRA Kandaghat	1.1.97 to 31.1.97, 1.3.97 to 31.3.97 & 1.4.97 to 31.12.97	223
11.	Supervisor	NWDPRA Kandaghat	1.1.98 to 31.12.98	355
12.	Supervisor	NWDPRA Kandaghat	1.1.99 to 31.12.1999	347
13.	Supervisor	NWDPRA Kandaghat	1.1.2000 to 24.11.2000	325
14.	Surveyor	Soil conservation section Kandaghat	24.9.2001 to 3.12.2001.	64

As per the detail, above, the petitioner had worked under the different schemes of temporary nature as per the availability of work in the particular schemes/projects but he had not completed 240 days in calendar year upto 1995 and due to the closure of the projects, the services of the petitioner were not required. It is admitted that the respondents had started the process to fill up the posts of surveyors directly on batch wise basis by inviting the name of the persons from Regional Officers/Employment Exchanges and the candidates up to the batch of 1985 were called for interview held on 26.6.2000. It is asserted that the petitioner was discharged due to the non-availability of work on 24.11.2000 by following the procedure of section 25-F of the Act and the provision of sections 25-K and L of Chapter- V B are not applicable to the claim of the petitioner. It is further asserted that the petitioner was dis-engaged due to non-availability of work on 24.11.2000 by following the procedure of section 25-F of the Act and thereafter on the direction of Administrative Tribunal, he was re-engaged on 24.9.2001 and subsequently he was retrenched from the daily paid services w.e.f. 3.12.2001 in accordance with the law under section 25-F of the Act and wages in lieu of one month's notice period equal to the amount of wages last drawn amounting to ` 3983/- were paid to the petitioner which had duly been received by him on 19.12.2001. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner has reiterated his allegations by denying those of the respondents.

5. Pleadings of the parties gave rise to the following issues which were struck on 20.9.2010 and issue no.1 was re-casted on 5.8.2013.

1. Whether the services of the petitioner w.e.f. 3.12.2001 have been terminated in an illegal and improper manner in contravention of the provisions of the Industrial Disputes Act, 1947 as alleged? . .*OPP.*

2. If issue no.1 is proved in affirmative to what relief of service benefits, the petitioner is entitled to? . .*OPP.*

3. Whether the claim of the petitioner is time barred? . .*OPR.*

4. Relief.

6. I have heard the learned Counsel for the petitioner and learned ADA for respondents and have also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in service with seniority and continuity from the date when he raised the demand notice i.e w.e.f. 3.9.2007 but without back-wages.
Issue no. 3	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issue no.1

8. Ld. Counsel for petitioner contended that the petitioner had worked continuously as daily waged surveyor with the respondents w.e.f. September, 1991 till 3.12.2001 and his services have been terminated orally without serving any notice and without following the mandatory provisions of the Act. He further contended that the petitioner had completed 240 working days in twelve calendar months preceding his termination and even before terminating his services, no opportunity of being heard was afforded to him. He also contended that the respondent had engaged other surveyors in the department who are juniors to the petitioner which is clear cut violation of the provisions of section 25-G & H of the Act and also against the principles of "last come first go" and since, the services of the petitioner were terminated in utter violation of the provisions of the Act, he deserves to be reinstated alongwith all the consequential benefits including back wages.

9. On the contrary, learned ADA for respondents contended that the services of the petitioner had been engaged on daily wages basis and as such he had worked under the different schemes of temporary nature as per the availability of work in the particular schemes/projects but he had not completed 240 days in calendar year and due to the closure of the projects, the services of the petitioner were not required. He further contended that the respondents had started the process to fill up the posts of surveyors directly on batch wise basis by inviting the name of the persons from Regional Officers/Employment Exchanges and the candidates up to the batch of 1985 were called for interview held on 26.6.2000. He also contended that the petitioner was discharged due to the nonavailability of work by following the provisions of section 25-F of the Act.

10. While appearing in the witness box as PW-1, the petitioner has deposed that he was engaged as daily waged surveyor by the respondents in the year, 1991 at Dehra District Kangra and thereafter w.e.f. 7.12.1992, he had worked at Shimla till 20.5.1993 and w.e.f. 7.6.1993, he had been working at Arki (SDSCO) Solan where he worked till 24.11.2000 without any break and thereafter in the month of November, 2000, he had been terminated from service. He filed an OA no. 3917 of 2000, before the Administrative Tribunal which was allowed on 19.9.2001 and he was reengaged in service. Thereafter on 3.12.2001, his services had been terminated and he again filed an OA no. 509 of 2002 before the Administrative Tribunal. Thereafter, he filed CWP No. 791 of 2004 before the Hon'ble High Court in which he was directed to file his claim before competent authority. \Then, he raised demand notice Ex. PW-1A but the conciliation failed and thereafter he filed the claim before this Court. He was not served three months' notice before terminating his services. Before terminating his services, he had worked continuously for 240 days in each calendar year. The department had engaged other surveyor in the department after his termination and his juniors are still working with the respondents. At the time of engaging fresh surveyors, he was not called by the respondents. He was not paid retrenchment compensation. He is unemployed after his termination. He was terminated illegally by the respondents. In cross-examination, he admitted that w.e.f. 1.9.1991, he had worked continuously for 72 days and in the year 1992, after the closure of the project, he was engaged temporarily under different schemes. He denied that due to non-availability of work, he was retrenched by the department. He admitted that on 24.11.2000, he was retrenched by the department. He denied that regarding his termination w.e.f. 24.11.2000, he had been given notice and compensation. He expressed his ignorance that notice under section 25-F was sent on his address or not. He denied that he had not completed 240 days in the years, 1991 to 1993, 1995, 1997 and 2000. He denied that due not non-availability of work, he was again retrenched.

11. PW-2 Shri Inder Lal, Senior Assistant has stated that the vacancies of surveyors in the department from the year 1992 onwards till 2014 is depicted in Ex. PW-2/A and the detail

regarding the filling up the posts of surveyors on contract basis is as per Ex. PW-2/B and vide Ex. PW-2/C one other individual was engaged on contract basis. No surveyor was engaged from the year 1991 till 2001 on daily wage basis and Ex. PW-2/D is the seniority list of surveyors. Ex. PW-2/E is the mandays chart of the petitioner and the petitioner was engaged as daily waged surveyor in the project (US Aid Project) which was under the department of agriculture and the department had not issued any letter to the petitioner before filling up the posts of surveyors on contract basis. In cross-examination, he admitted that the US Aid Project was the project of Central Government for a period of three months and the funds for the said project were allocated by the Central Government. He further admitted that such projects are on seasonal and co-terminus basis and the petitioner had remained on daily wages basis in the project and during the year, 2001, the surveyors were appointed up to the batch of July, 1984. He denied that the petitioner had voluntarily left his job. The posts of surveyors in the year, 2001 were filled up by advertising the same through Employment Exchange and no letter was issued to any person by name for filling up the post of surveyor. He admitted that the petitioner had never applied for the job of surveyor at the time of advertisement and the person who was appointed on contract basis in the year, 2008 was appointed from special quota. He further admitted that no junior to the petitioner had been retained by the department.

12. On the contrary, respondents examined one Shri Naresh Kumar Superintendent, who has stated that USA Project National Water Soil Development Programme was being implemented through their department for which the technical staff and labourers were engaged on muster roll basis from locality. Under this project soil conservation and water shed schemes were being carried out and on the completion of the schemes, the services of engaged staff and labourers stood terminated. The petitioner had worked under different sections and different sub divisions as daily wager surveyor on muster roll. The petitioner was terminated from service on 24.11.2000 due to non-availability of work by giving notice Ex. RW-1/A, which was duly published in newspaper vide Ex. RW-1/B. Along-with the notice draft amounting to ` 6,150/- Ex. RW-1/C had also been sent through registered post on the address of the petitioner. The services of the petitioner had been reengaged on the orders of the Administrative Tribunal but due to non-availability of work, he was again retrenched from service after complying with the mandatory provisions of section 25-F of the Act and wages for one month's amounting to ₹ 2655/- along-with retrenchment compensation of ₹ 3983/- had been paid to the petitioner, the receipt of which is Ex. RW-1/D and Ex. RW-1/E is the notice. The services of the petitioner had legally been terminated due to non-availability of work. In cross-examination, he admitted that in the years, 1997 to 2000, the petitioner had worked for more than 240 days and he was working on muster roll. He denied that Ex. RW-1/E had never been sent to the petitioner and in the year 2001, no notice and compensation had been given to the petitioner. He admitted that the department had engaged daily waged surveyor in the year, 2001.

13. I have considered the respective contentions of the learned counsel for petitioner and learned ADA for the respondents and had also scrutinized the record of the case minutely.

14. After the closer scrutiny of the record of the case, it has become clear that the services of the petitioner had been engaged by the respondents as daily waged surveyor on 1.9.1991 and he worked as such till 23.11.2001 as is evident from the muster roll Ex. PW-2/E. Its perusal goes to show that the petitioner had worked for 91 days in the year, 1991, 25 days in 1992, 206 days in 1993, 299 days in 1994, 245 days in 1995, 363 days in 1996, 290 days in 1997, 386 days in 1998, 347 days in 1999 and 326 days in 2000 with the respondents at different places. It is also an admitted fact that firstly the services of the petitioner had been terminated by the respondents on 24.11.2000 and thereafter he preferred an OA before the Administrative Tribunal which was allowed and the services of the petitioner had been re-engaged and then again his services had been terminated w.e.f. 3.12.2001. Now, the question which arises for determination before this Court is as to whether the services of the petitioner w.e.f. 3.12.2001, have been terminated illegally without

the compliance of the provisions of the Act. The petitioner as PW-1 has stated that before terminating his services neither any notice nor any compensation was paid to him. On the other hand, the stand of the respondents is to the effect that before terminating the services of the petitioner, notice Ex. RW-1/E, under section 25-F of the Act was issued to him and the wages in lieu of one month's notice period ` 2,655/- along-with retrenchment compensation of ` 3,983/- was remitted through Bank Draft which was duly received by the petitioner as is evident from the receipt Ex. RW-1/D. Therefore, in view of the overwhelming evidence on record it cannot be said that the services of the petitioner had been terminated by the respondent without compliance of the provisions of section 25-F of the Act.

15. The learned counsel for the petitioner next contended that juniors to the petitioner have been retained and fresh surveyors have been engaged by the respondents without giving an opportunity to the petitioner for re-employment as such the respondent had violated the provisions of sections 25-G & 25-H of the Act. It has been held by the Hon'ble Supreme Court in series of judgments that it is not necessary for the workman to have completed 240 days during preceding twelve calendar months for taking the benefits of sections 25-G and 25-H of the Act. In a decision titled as **Ajaypal Singh Vs. Haryana Warehousing Corporation (2015) 6 SCC 321**, it has been held by the Hon'ble Apex Court that for attracting section 25-G and 25-H, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding his termination. It has further been held that the retrenched workman shall be given preference over other workers if the employer proposes to employ other person. The relevant portion of the aforesaid judgment reads as under:

> "11. For attracting the provisions of section 25-G of the Industrial Disputes Act, 1947, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting retrenchment, the employer violated the rule of "last come first go" without any tangible reason.
>
> 12. Section 25-H is couched in wide language and is capable of application to all "retrenched workmen" and not merely those covered under Section 25-F of the Act.
>
> 13. ……
>
> 14. In case if an employer proposes to employ any person, it is mandatory on the part of the employer to give an opportunity to the retrenched workmen who offer themselves for re-employment and such workmen who offer themselves for reemployment shall have preference over other persons. The provision of section 25-H is in conformity with Articles 14 & 16 of the Constitution of India."

16. In the present case, RW-1 Shri Naresh Kumar an official of the respondent admitted in cross-examination that in the year, 2001 daily waged surveyors have been appointed as per detail given in Ex. RX-2. However, the case of the respondent is that they have started the process to fill up the posts of surveyors directly on batch wise basis by inviting the names of the persons from Regional Officers/Employment Exchanges and the candidates up to the batch of 1985 were called for the interview held on 26.6.2000. PW-2, also admitted in cross-examination that the posts of the surveyors in the year, 2001 were filled up by advertising the same through Employment Exchange and the surveyors were appointed during the year, 2001 up to the batch of July, 1984. Admittedly, the petitioner was initially engaged in the month of September, 1991. No material has been produced on record by the petitioner to show that the respondents had retained his juniors against the principles of "last come first go" Therefore, in the absence of any material on record, it cannot be said that the respondents had violated the provisions of section 25-G of the Act.

17. PW-2 Shri Inder Pal, official from the Directorate of agriculture has produced on record the detail regarding filling up of the posts of surveyors on contract basis as per letter Ex. PW-2/B. He further stated that apart from the persons mentioned in Ex. PW-2/B, another person was engaged on contract basis as surveyor in the year, 2008 vide letter Ex. PW-2/C. He also stated that the department had not issued any letter to the petitioner before filling up the post of surveyors. The perusal of letter dated 4.3.2011 Ex. PW-2/B shows that the Government has conveyed the approval of posting of twelve surveyors to the Director of agriculture and perusal of letter dated 1.7.2008, Ex. PW-2/C shows that one Shri Parvesh Kumar was appointed as surveyor on contract basis. No material has been produced on record by the respondents to show that any opportunity was given to the petitioner for re-employment at the time of filling up of the new posts. Therefore, from the aforesaid evidence, it is clear that after the termination of the services of the petitioner, the respondent had appointed fresh surveyors without giving any opportunity to the petitioner for re-employment in violation of section 25-H of the Act.

18. Thus, having regard to the entire evidence on record, I have no hesitation in coming to the conclusion that after the termination of the services of the petitioner, fresh surveyors have been engaged by the respondents and as such the termination of the services of the petitioner by the respondents without complying with the provisions of section 25-H of the Act is illegal and unjustified. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue no. 2.

19. Since, I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of section 25-H of the Act is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity from the date when he raised the demand notice i.e w.e.f. 3.9.2007.

20. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

21. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record aterials to rebut the claim……."

22. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages.

Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue no. 3

23. In support of this issue, the learned ADA for respondents contended that the petition filed by the petitioner is time barred as he has raised the demand notice Ex. PW-1/A after a gap of six years. But, when regard is given to entire evidence on record it is established that after the termination of the services of the petitioner w.e.f. 3.12.2001, he approached Administrative Tribunal and filed OA no. 509/2002 which was disposed of on 14.7.2004 by observing that the appropriate remedy available to the applicant is to approach the Industrial Tribunal/Labour Court or any other authority constituted or established under the relevant statute. Admittedly, thereafter the petitioner preferred CWP no. 791 of 2004 before the Hon'ble High Court, which was also dismissed on 17.7.2007. However, it was observed by the Hon'ble High Court that if the petitioner approaches the State Government for making a reference of the industrial dispute within a period of two months from today, the same shall be considered in accordance with law and delay shall not come in the way of the petitioner for making a reference. This is because the petitioner has been bona fide pursuing his remedy before the Tribunal and thereafter before this Court. Thereafter the petitioner raised a demand notice on 3.9.2007. Therefore, in view of the facts and circumstances of the present case, the petitioner cannot be blamed for the delay in raising the present dispute as he kept his dispute alive by filing OA no. 509/2002 before the Administrative Tribunal which was disposed of on 14.7.2004 and thereafter the petitioner filed CWP no. 791 of 2004 before the Hon'ble High Court which was disposed of on 17.7.2007 and thereafter the petitioner raised the industrial dispute on 3.9.2007, Ex. PW-1/A. Moreover, it is not the case of the respondent that due to the delay in raising the industrial dispute, there is any loss or unavailability of material evidence. Hence, it cannot be said that delay in raising the industrial dispute is fatal to the reference and as such the petitioner cannot be debarred from claiming the relief from his employer and mere delay in challenging the termination would not be a bar to the adjudication of the present dispute which has been referred to this Court by the appropriate government. Moreover, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in ***in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another.*** *that:--*

> ***"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"***

It has also been held by the Hon'ble Supreme Court in **Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SCC 496** that mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue.

24. Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under

the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity from the date when he raised the demand notice i.e w.e.f. 3.9.2007. However, the petitioner is not entitled to back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 29th day of April, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUMLABOUR COURT, SHIMLA, (H.P).

Ref. No. 36 of 2013.

Instituted on. 19.6.2013.

Decided on 29.4.2016.

Ram Rattan S/o Shri Ratti Ram, R/o Village Bhagharani, P.O Isher Nagar, Pinjore, District Panchkula, Haryana. . .*Petitioner.*

Vs.

1. The Managing Director, Geep Battries (1) Ltd., Plot no. 66 and 67 HPSIDC, Juddi Kalan, Baddi District Solan, HP.

2. M/s Geep Battries (1) Ltd., Plot no. 66 and 67 HPSIDC, Juddi Kalan, Baddi District Solan, HP. . .*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Surinder Mohan Sharma, Advocate.

For respondents : Shri Rupesh Sharma, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of the services of Shri Ram Rattan C/o Satish Kumar President HP AITUC District Committee Solan, H.Q House no. 276, Phase-III Housing Board Baddi, District Solan, HP by the management of M/s Geep Battries (1) Ltd., Plot no. 66-67, HPSIDC Juddi Kalan Baddi, District solan, HP w.e.f. 23.10.2009 without following the provisions of the Industrial Disputes Act, 1947 as alleged by the worker, is legal and justified? If not, what relief including reinstatement in service, back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above management?"

2. In nutshell, the case of the petitioner is that he had joined the respondents on 10.2.2006 and continued as such till his illegal termination/retrenchment. The petitioner was working as tool turner and was being paid ` 8100/- per month. The services of the petitioner remained continuous for the purpose of section 25-B of the Act as he had worked for more than 240 days in each calendar year. It is further stated that at the time of retrenchment/termination of the workman, the services of many juniors were retained in violation of section 25-G of the Act. The petitioner was appointed as turner on 23.1.2006. The work and conduct of the petitioner remained excellent during his tenure with the company as he was never served with any explanation call, warning letter, show cause notice etc. Against this back-drop a prayer for his re-engagement, along-with back-wages and other consequential service benefits has been made.

3. By filing reply, the respondents had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, the petitioner has not come to this Court with clean hands and the petitioner is gainfully employed. On merits, it has been admitted that the petitioner joined the respondents as an operator w.e.f. 10.2.2006 but it is denied that the petitioner was drawing ₹ 8100/- per month at the time of his abandoning the job. It is admitted that the petitioner had completed 240 days in one year and a show cause notice to three persons including the petitioner had been issued as they were found sitting idle during duty hours but the petitioner instead of filing the reply to show cause notice, abandoned the job. The services of the petitioner had never been terminated by the respondents, who himself had abandoned his job. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 20.2.2014.

5. Whether the termination of the services of the petitioner w.e.f. 23.10.2009 is illegal and unjustified as alleged? . .*OPP.*

6. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? . .*OPP.*

7. Whether this petition is not maintainable as alleged . .*OPR.*

8. Relief.

5. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no. 1 Yes.

Issue no. 2 Entitled for reinstatement in service with seniority and continuity but without back-wages.

Issue no. 3 No.

Relief. Reference answered in favour of the petitioner and against the respondents per operative part of award.

Reasons for findings

Issues no.1.

7. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that before terminating his services no enquiry had been conducted against him and even the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged.

8. On the other hand, Ld. counsel for the respondents contended that the services of the petitioner had never been terminated by the respondents, who himself had abandoned his job without any intimation to the respondent.

9. The petitioner stepped into the witness box as PW-1 to depose that he joined as turner with the respondents on 10.2.2006 and worked as such till 23.10.2009. He was drawing ₹ 8100/- per month. He had completed 240 days. He was terminated on 23.10.2009 and juniors to him are still working with the respondents. Ex. PW-1/A is his appointment letter and vide Ex. PW-1/B, his PF was being deducted. He was served show cause notices vide Ex. PW-1/C and Ex. PW-1/D which were duly replied by him vide Ex. PW-1/E to Ex. PW-1/H and the same were sent by him through courier vide receipts Ex. PW-1/J and Ex. PW-1/K and the copies of information obtained under RTI Ac are Ex. RW-1/L & Ex. PW-1/M. Ex. PW-1/N is his identity card and Ex. PW-1/O is ESI Card. He was not issued any chargesheet. In cross-examination, he denied that he had not followed the orders of his superiors and when three officers of the company had visited the company, he (petitioner) was not working. He denied that he had abandoned the job at his own.

10. On the contrary, the respondents examined one Shri Masood Ali Baig, as RW-1, who has stated that the petitioner was appointed as a turner on 23.1.2006 and during the visit of Chairperson, it was found that Shri Ram Rattan and another two persons were sitting idle and gossiping with each other and the work was stopped and for this reason a show cause notice Ex. PW- 1/C was issued to them but the petitioner never came back to the company. All the dues regarding the work of the petitioner was paid vide Ex. PW-1/B. In cross-examination, he admitted that Ram Rattan was appointed as turner vide letter dated 23.1.2006 and he joined as such vide letter Ex. PW-1/A. He further admitted that the petitioner had worked honestly. He denied that the allegations leveled against the petitioner were wrong. He admitted that the petitioner had filed reply to show cause notice and they are ready to re-instate the petitioner but without any compensation.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that vide Ex. PW-1/A, the petitioner was appointed as turner on 10.2.2006 by the respondents and he worked as such till 23.10.2009. The only plea taken by the respondents is to this effect that the services of the petitioner had never been terminated but he himself had abandoned his job without any intimation and the respondents company is still ready to take him back in job as is evident from the statement of RW-1 Shri Masood Ali Baig. However, respondents have failed to prove on record by leading cogent and satisfactory evidence to show that the petitioner had abandoned the job on his own. By mere alleging that the petitioner had abandoned the job on his own is not sufficient to prove the stand of the respondents especially

when there is nothing on record which could show that the respondents have ever sent any letter or notice to the petitioner to resume his duties. In ***State of HP & Others Vs. Bhatag Ram & Another reported in Latest HLJ 2007 (HP) 903, our own Hon'ble High Court after relying upon the decision of the Hon'ble Supreme Court in G.T Lad and others V. Chemicals and Fibers India Ltd., AIR 1979 SC 582*** *has held that* the findings of abandonment is a fact and the same has to be substantiated by leading evidence. In the present case also, as stated above, the respondents have failed to prove the plea of abandonment by leading cogent and satisfactory evidence on record as such it cannot be said that the petitioner has abandoned the job on his own.

12. Now, it has to be seen as to whether the termination of the services of the petitioner is illegal or unjustified. Admittedly, show cause notices Ex. PW-1/C and Ex. PW-1/D have been issued to the petitioner which were duly replied by him vide Ex. PW-1/E to Ex. PW-1/H. It has also been admitted by RW-1 Shri Masood Ali Baiq that the petitioner had filed reply to show cause notices. It is settled legal proposition that a workman, against whom misconduct is alleged, cannot be dismissed or discharged unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if the alleged misconduct is proved against the workman, he cannot be discharged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent. It has been admitted by the respondents in the reply that the petitioner had completed 240 days in one year. Since, the petitioner had completed 240 days in twelve calendar months preceding his termination, a reasonable opportunity of being heard should have been afforded to him and proper enquiry should have been held before terminating his services. **In *D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments -221*, the Hon'ble Apex Court** has held as under:

> *"Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service."*

In a recent judgment of our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the Hon'ble High Court has held that termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

> "8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:
>
> 9 ……..
>
> 10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.
>
> 11 ……..
>
> 12 …….
>
> 13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

In the instant case, admittedly, the petitioner had worked with the respondents w.e.f. 10.2.2006 to 23.10.2009 continuously meaning thereby the petitioner had completed 240 working days in twelve calendar months preceding his termination. Even, RW-1 has admitted in his cross-examination that Shri Ram Rattan had worked honestly. However, the petitioner was never asked to answer any charges as no chargesheet was issued to him and no enquiry was held before terminating his services, on the basis of the alleged misconduct. Hence, the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondents to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. **In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana),** the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

> "16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.
>
> 17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……..."

13. Therefore, in view of my aforesaid discussion, as it is clear that the petitioner had worked for more than 240 days in twelve calendar months preceding his termination, the respondents were under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating his services. But, no such compliance was made by the respondents, hence, there is violation of section 25-F of the Act, on the part of respondents. As a result, the termination of petitioner w.e.f. 23.10.2009 is not sustainable in the eyes of law and is hereby set aside.

14. The learned counsel for the petitioner next contended that the persons junior to petitioner have been retained in service and they have been regularized. However, except for the bald statement of the petitioner, no other evidence has been led by him to prove this fact. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be held that the provisions of section 25-G & H of the Act are attracted to the present case and any hostile discrimination was meted out against the petitioner.

15. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner w.e.f. 23.10.2009, by the respondents without complying with the provisions of the Act, is illegal and unjustified. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue no .2.

16. Since, I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is improper, illegal and

unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

17. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

18. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

19. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages.

Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondents.

Issue No. 3.

20. In support of this issue, no evidence has been led by the respondents. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However, the petitioner is not entitled to back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 29th Day of April, 2016.

(SUSHIL KUKREJA),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 27th *April,* 2016

No: Shram (A) 6-2/2014 (Awards) D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr. No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	118/14	Chanchal Singh	Director Surya Resorts Dharamshala	01-03-2016
2.	97/14	Ajay Kumar	M/S Tigaksha Metallics	16-03-2016
3.	102/15	Roop Chand	E.E.HPPWD, Killar	21-03-2016
4.	109/15	Anita Kumari	E.E.HPPWD, Killar	21-03-2016
5.	93/15	Basant Singh	E.E.HPPWD, Killar	21-03-2016
6.	205/15	Rusli Devi	E.E.HPPWD, Killar	21-03-2016
7.	210/15	Pyar Dei	E.E.HPPWD, Killar	21-03-2016
8.	98/15	Om Prakash	E.E.HPPWD, Killar	21-03-2016
9.	162/15	Dharam Diyal	E.E.HPPWD, Killar	21-03-2016
10.	94/15	Ram Kishan	E.E.HPPWD, Killar	21-03-2016
11.	161/15	Sesar Chand	E.E.HPPWD, Killar	21-03-2016
12.	201/15	Param Dass	E.E.HPPWD, Killar	21-03-2016
13.	158/15	Maghi	E.E.HPPWD, Killar	21-03-2016
14.	136/15	Nand Lal	D.F.O. Hamirpur	21-03-2016
15.	134/15	Budhi Singh	D.F.O. Hamirpur	21-03-2016
16.	135/15	Rakesh Kumar	D.F.O. Hamirpur	21-03-2016
17.	67/15	Ram Pal	D.F.O. Hamirpur	21-03-2016
18.	68/15	Roop Lal	D.F.O. Hamirpur	21-03-2016

19.	110/14	Kanta Devi	M.D. Gen. Industries	22-03-2016
20.	113/14	Devi Rani	M.D.Gen.Industries	22-03-2016
21.	235/14	Renu Vaidya	Asstt. Town Planner	23-03-2016
22.	227/14	Rakesh Singh	M/S Shivansh Motors	29-03-2016
23.	31/14	Kanshi Ram	D.F.O. Sunder Nagar	29-03-2016
24.	72/14	Ramesh Chand	D.F.O. Hamirpur	29-03-2016
25.	08/13	Khem Raj	D.F.O. Sunder Nagar	30-03-2016
26.	297/15	Ashwani Kumar	Manager H.P.Tourism	30-03-2016
27.	74/15	Deep Chand	D.F.O. Shamshi	30-03-2016
28.	73/15	Rohlu Ram	D.F.O. Shamshi	30-03-2016

By order,
Sd/-
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUMINDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. : 118/2014

Sh. Chanchal Singh s/o Sh. Uttam Singh, r/o V.P.O. Malan, Tehsil & District Kangra, H.P. . .*Petitioner*.

Versus

The Employer/Executive Director, Surya Resorts Private Limited, Mcleodganj, Tehsil Dharamshala, Distt. Kangra, H.P. . .*Respondent*.

01-03-2016 Present: Petitioner with Sh. N.L. Kaundal, A.R.

Sh. Paramjeet Bamba, Executive Director for the respondent company in person.

Sh. Jitender Sharma, adv. csl. for the respondent.

RW Sh. Paramjeet Bamba is present today. He has filed photocopy of cheque No.648049 dated 01-03-2016 P.N.B Shyamnagar which is placed on record.

2. Heard. Statement of the petitioner for not pressing of reference no. 118/14 is recorded which revealed that petitioner has received Rs. 40,000/-(Rs. Forty Thousand only) through cheque No. 648049 dated 01-03-2016 drawn on PNB Shyam Nagar Dharamshala Bank (Photocopy enclosed) from the respondent in full and final settlement of claim of petitioner. Statement of RW Sh. Paramjeet Bamba to this effect has also been recorded separately and placed on file.

3. In view of above stated statements, the reference/claim of the petitioner is disposed of as withdrawn.

4. Ordered accordingly. The parties to bear their own costs.

5. The reference is answered in the aforesaid terms.

6. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

7. The file, after completion be consigned to the records.

Announced:
01.03.2016

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT CUMINDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 97/ 2014

Sh. Ajay Kumar s/o Shri Harnek Singh, r/o Village Nalruha, Tehsil Dehra, Distt. Kangra, H.P. . .*Petitioner*.

Versus

The Managing Director/Employer, M/S Tigaksha Metallics Pvt. Ltd., Plot No.16, Ram Nagar, Industrial Area Gagret, Tehsil Amb, Distt. Una, H.P. . .*Respondent*.

16-03-2016 Present: None for the petitioner.

Sh. Rajesh Kosh, Law Officer for the respondent
Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

16-03-2016 Present: None for the petitioner.

Sh. Rajesh Kosh, Law Officer for the respondent

Case has been called again several times but none has appeared on behalf of petitioner. It is 3.15 P.M. None appearance petitioner or his Authorised Representative today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
16-03-2016

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 102/2015
Date of Institution : 04.03.2015
Date of Decision : 21.03.2016

Shri Roop Chand s/o Shri Manak Chand, r/o Village Chask, P.O. Seichu, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. . .*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Roop Chand S/O Shri Manak Chand, R/O Village Chask, P.O. Seichu, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. vide

demand notice dated 27-09-2010 regarding his alleged illegal termination of service during August, 2004 suffers from delay and laches? If not, Whether termination of the services of Shri Roop Chand S/O Shri Manak Chand, R/O Village Chask, P.O. Seichu, Tehsil Pangi, District Chamba, H.P. during August, 2004 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1981 who continuously worked till August, 2004 in HPPWD Sub Division Killar. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of August, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of August, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of August, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of August, 2004. He further prayed for reinstatement in service w.e.f. month of August, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 1990 to August, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.1994 having completed 10 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Mool Raj Upadhayay vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1990 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as haraness case. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri V.K. Dhiman, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D22 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.07.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year August, 2004 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

4. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.1,20,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1990 who continuously worked till 2004 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1990 to August, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand

notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 25 days in the year 1990, 18 days in 1991, 26 days in 1992, 32 days in 1994, 52 days in 1995, 86 days in 1996, 127 days in 1998, 132 days in 1999, 121 days in 2000, 64 days in 2001, 29 days in 2002, 113 days in 2003 and 48 days in 2004 and thus a total of his service in 1990 to 2004 in 13 years he had worked for 902 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 48 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were

retained whereas petitioner was senior from these co-workers having joined service in 1990 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D22. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D22 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in August, 2004, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court

titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2004 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum-Processing**

Society Limited and Another, (1999) 6 SCC 82 in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and his termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22] Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 13 years and actually worked for 902 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2004 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **six years** i.e. demand notice was given on 27.9.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 48 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. Authorized Representative for petitioner on

the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.**

21. In view of foregoing discussion, a lump-sum compensation of Rs.1,20,000/- (Rupees one lakh twenty thousand only) would be a appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within three months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.1,20,000/- (rupees one lakh twenty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 109/2015

Date of Institution : 05.03.2015

Date of Decision : 21.03.2016

Smt. Anita Kumari d/o Shri Sesar Chand, r/o V.P.O. Saach, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, (Pangi), District Chamba, H.P. . .*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Smt. Anita Kumari D/O Shri Sesar Chand, R/O V.P.O. Saach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. vide demand notice dated 11 09-2007 regarding her alleged illegal termination of service during year 1999 suffers from delay and laches? If not, Whether termination of the services of Smt. Anita Kumari D/O Shri Sesar Chand, R/O V.P.O. Saach, Tehsil Pangi, District Chamba, H.P. during year 1999 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of June, 1994 who continuously worked till September, 1999 in IPH/HPPWD Sub Division, Sach. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25- B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be

counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 1999 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of September, 1999 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 1999. She further prayed for reinstatement in service w.e.f. month of September, 1999 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between June, 1994 to September, 1999 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2002 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 1999 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 and 26 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 1999 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of

petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Upreti, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12.8.2015 for determination which are as under:

1. Whether termination of services of the petitioner by the respondent during the year 1999 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.

4. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Petition is partly allowed awarding compensation Rs.60,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the month of 1994 who continuously worked till 1999 at HPPWD/IPH Sub Division Sach is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from June, 1994 to September, 1999. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 1999 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 1999. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 132 days in the year 1994, 143 days in 1995, 159 days in 1996, 174.5 days in 1997, 154.5 days in 1998 and 125 days in 1999 and thus a total of her service in 1994 to 1999 in 6 years she had worked for 888 days in her entire service period. Be it noticed that except the years 1994, 1995, 1996, 1998 and 1999 she had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1999 the petitioner had merely worked for 125 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 1999 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 1999, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the

industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case,

the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1999 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5 Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 6 years and actually worked for 888 days as per mandays chart on record and that the services of petitioner were disengaged in September, 1999 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given on 11.9.2007. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 30 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.**

21. In view of foregoing discussion, a lump-sum compensation of Rs.60,000/- (Rupees sixty thousand only) would be a appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within three months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1,2 and 4 are answered accordingly.

ISSUE NO.3

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.60,000/- (Rupees sixty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 93/2015

Date of Institution : 04.03.2015

Date of Decision : 21.03.2016

Shri Basant Singh s/o Shri Amar Chand, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. . .*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Shri Basant Singh S/O Shri Amar Chand, R/O Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. vide demand notice dated 08-08-2010 regarding his alleged illegal termination of service during October, 2000 suffers from delay and laches? If not, Whether termination of the services of Shri Basant Singh S/O Shri Amar Chand, R/O Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. during October, 2000 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefitsand compen sation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1987 who continuously worked till October, 2000 in HPPWD Sub Division Killar. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October, 2000 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of October, 2000 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of October, 2000 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of

India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2000. He further prayed for reinstatement in service w.e.f. month of October, 2000 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 1990 to October, 2000 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2004 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2000 but had worked intermittently as petitioner used to come and attend the work at his ownsweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as haraness case. It is also contended that if petitioner had been terminated in 2000 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri V.K. Dhiman, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D22 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.07.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year October, 2000 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

5. Whether the claim petition is not maintainable in the present form as alleged? . .OPR.

6. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1997 who continuously worked till 2002 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 to October, 2000. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in October, 2000 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this,

the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2000. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 166 days in the year 1997, 87 days in 1999 and 84 days in 2000 and thus a total of his service in 1997 to 2000 in 3 years he had worked for 337 days in his entire service period. Be it noticed that except years 1999 and 2000 petitioner had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2000 the petitioner had merely worked for 84 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex.PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were

given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2000 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D22. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D22 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October, 2000, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance

of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the

circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:- "10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court) 16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P.**

(Bhatag Ram's case) in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and his termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 3 years and actually worked for 337 days as per

mandays chart on record and that the services of petitioner were disengaged in October, 2000 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **six years** i.e. demand notice was given on 08.08.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 37 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.**

21. In view of foregoing discussion, a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be a appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within three months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (rupees forty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 205/2015

Date of Institution : 04.05.2015

Date of Decision : 21.03.2016

Smt. Rusli w/o Shri Lal Chand, r/o Village and Post Office Sach, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. . .*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Smt. Rusli W/O Shri Lal Chand, R/O Village and Post Office Sach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 08.08.2010 regarding her alleged illegal termination of service during October, 2000 suffers from delay and latches? If not, Whether termination of the services of Smt. Rusli W/O Shri Lal Chand, R/O Village and Post Office Sach, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during October, 2000 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1992 who continuously worked till October, 2000 in HPPWD and IPH Sub Division, Killar. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba andbecame eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be

counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of October, 2000 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of October, 2000 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of October, 2000 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of October, 2000. She further prayed for reinstatement in service w.e.f. month of October, 2000 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 1992 to October, 2000 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2002 having completed 10 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Mool Raj Upadhayay vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1994 who remained engaged till 2000 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2000 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of

petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Upreti, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 28.8.2015 for determination which are as under:

1. Whether termination of services of the petitioner by the respondent during the year October, 2000 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

5. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

6. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the month of August, 1994 who continuously worked till October, 2000 at HPPWD and IPH Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from August, 1994 to 2000. She has also stated on oath that no notice under Section 25- F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in October, 2000 by oral order had engaged several co-workers whowere junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after October, 2000. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work

as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 29 days in the year 1994, 40.5 days in 1995, 11 days in 1997, 26 days in 1998, 28 days in 1999, and 115 days in 2000 and thus a total of her service in 1994 to 2000 in 6 years she had worked for 249.5 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2000 the petitioner had merely worked for 115 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after October, 2000 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1994 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section

25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October, 2000, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross-examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

"12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it,**

it does not mean that the dispute ceases to exist. The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

> "10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

> 16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance

given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5 Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 6 years and actually worked for 249.5 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2000 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **seven years** i.e. demand notice was given on 8.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 52 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.**

21. In view of foregoing discussion, a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be a appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within three months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1,2 and 4 are answered accordingly.

ISSUE NO.3

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in

reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (Rupees forty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room. Announced in the open Court today this 21st day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 210/2015

Date of Institution : 25.05.2015

Date of Decision : 21.03.2016

Smt. Pyar Dei w/o Shri Ram Singh, r/o Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*.

Versus

Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. . .*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised the worker Smt. Pyar Dei W/O Shri Ram Singh, R/O Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated-nil- received on 08.5.2012 regarding her alleged illegal termination of service during September, 2003 suffers from delay and latches?? If not, Whether termination of the services of Smt. Pyar Dei W/O Shri Ram Singh, R/O Village and Post Office Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, I.&P.H./H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during September, 2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of May, 2000 who continuously worked till September, 2003 in IPH/HPPWD Sub Division, Killar. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25- B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2003 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of September, 2003 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of

September, 2003. She further prayed for reinstatement in service w.e.f. month of September, 2003 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 2000 to September, 2003 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2008 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 2002 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2003 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Upreti, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 28.10.2015 for determination which are as under:

1. Whether the industrial dispute raised by petitioner vide demand notice Dated-nil- qua her termination of service during year September, 2003 by respondent suffers from vice of delay and laches as alleged? If so, its effect? . .*OPP*.

2. Whether termination of services of the petitioner by the respondent during the year September, 2003 is/was illegal and unjustified as alleged? . .*OPP*.

3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

4. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.35,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the month of May, 2002 who continuously worked till September, 2003 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 2002 to 2003. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2003 by oral order had engaged

several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal thatpetitioner had worked for 87 days in the year 2002 and 54 days in 2003 and thus a total of her service in 2002 to 2003 in 2 years she had worked for 141 days in her entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 54 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were

given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 2002 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2003, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance

of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows—
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the

circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after

several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the

date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 2 years and actually worked for 141 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given on 08.5.2012. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 35 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.**

21. In view of foregoing discussion, a lump-sum compensation of Rs.35,000/- (Rupees thirty five thousand only) would be a appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within three months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1,2 and 3 are answered accordingly.

ISSUE NO.4

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.35,000/- (Rupees thirty five thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount ofcompensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 98/2015

Date of Institution : 09.03.2015

Date of Decision : 21.03.2016

Shri Om Prakash Ram s/o Shri Suraj Ram, r/o V.P.O. Sach, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. . .*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Om Prakash Ram S/O Shri Suraj Ram, R/O V.P.O. Sach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 23-07-2008 regarding his alleged illegal termination of service during year, 2000 suffers from delay and laches? If not, Whether termination of the services of Shri Om Prakash Ram S/O Shri Suraj Ram, R/O V.P.O. Sach, Tehsil Pangi, District Chamba, H.P. during year, 2000 by the Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the

month of July, 1996 who continuously worked till the year 2000 in HPPWD Sub Division Killar. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of 2000 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of August, 2000 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of August, 2000 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of August, 2000. He further prayed for reinstatement in service w.e.f. month of August, 2000 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 1996 to August, 2000 be counted 160 days continuous service and regularization of the service of petitioner having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 2000 but had worked intermittently as petitioner used to come and attend the work at his own sweet willand convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as

per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as haraness case. It is also contended that if petitioner had been terminated in 2000 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/E mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Upreti, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 28.08.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year 2000 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

7. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

8. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.60,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1996 who continuously worked till 2000 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1996 to August, 2000. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in 2000 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after 2000. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in crossexamination

has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 158 days in the year 1996, 47 days in 1997, 191.5 days in 1998, 283 days in 1999 and 47 days in 2000 and thus a total of his service in 1996 to 2000 in 5 years he had worked for 726.5 days in his entire service period. Be it noticed that except the years 1996, 1997 and 2000 he had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2000 the petitioner had merely worked for 47 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex.PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2000 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to

petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in August, 2000, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:—

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2000 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5 Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and his termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial

discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 5 years and actually worked for 726.5 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2000 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given on 23.7.2008. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 38 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.**

21. In view of foregoing discussion, a lump-sum compensation of Rs.60,000/- (Rupees sixty thousand only) would be a appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within three months from the date of Award failing which the petitioner would be

entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.60,000/- (rupees sixty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 162/2015
Date of Institution : 11.04.2015
Date of Decision : 21.03.2016

Shri Dharam Diyal s/o Shri Bhim Singh, r/o Village and P.O. Rei, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. . .*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Shri Dharam Diyal S/O Shri Bhim Singh, R/O Village and P.O. Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 25.12.2011 regarding his alleged illegal termination of service during November, 1997 suffers from delay and latches? If not, Whether termination of the services of Shri Dharam Diyal S/O Shri Bhim Singh, R/O Village and P.O. Rei, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during November, 1997 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1994 who continuously worked till November, 2005 in HPPWD Sub Division Sach. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of November, 2005 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of November, 2005 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he

has remained unemployed ever since his illegal termination from month of November, 2005 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of November, 2005. He further prayed for reinstatement in service w.e.f. month of November, 2005 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 1994 to November, 2005 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2002 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1992 who remained engaged till 1997 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 & 26 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as haraness case. It is also contended that if petitioner had been terminated in 1997 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Upreti, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12.08.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year November, 1997 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

9. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

10. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1992 who continuously worked till 1997 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1992 to November, 1997. He has also stated on oath that no

notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in November, 1997 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after November, 1997. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 138 days in the year 1992, 142 days in 1993, 197 days in 1994, 88 days in 1995, 198 days in 1996 and 136 days in 1997 and thus a total of his service in 1992 to 1997 in 6 years he had worked for 899 days in his entire service period. Be it noticed that except the years 1992, 1993, 1995 & 1997 he had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 1997 the petitioner had merely worked for 136 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner

remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex.PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1992 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D22. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D22 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in November, 1997, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu**

Surwase's case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows" 17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at

hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 1997 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10-Limitation Act, 1963- Section 5-Industrial dispute-Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and his termination was in violation osection 25-F of the I.D.Act-Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellant-employer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but**

surely reinstatement of the workman in the facts and circumstances is not the appropriate relief and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 6 years and actually worked for 899 days as per mandays chart on record and that the services of petitioner were disengaged in November, 1997 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **fourteen years** i.e. demand notice was given on 25.12.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 38 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.**

21. In view of foregoing discussion, a lump-sum compensation ofRs.50,000/- (Rupees fifty thousand only) would be a appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within three months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (rupees fifty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 94/2015

Date of Institution : 04.03.2015

Date of Decision : 21.03.2016

Shri Ram Kishan s/o Shri Charan Dass, r/o Village Chask, P.O. Seichu, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. . .*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Ram Kishan S/O Shri Charan Dass, R/O Village Chask, P.O. Seichu, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. vide demand notice dated 18-08-2010 regarding his alleged illegal termination of services during July, 2002 suffers from delay and laches? If not, Whether termination of the services of Shri Ram Kishan S/O Shri Charan Dass, R/O Village Chask, P.O. Seichu, Tehsil Pangi, District Chamba, H.P. during July, 2002 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1981 who continuously worked till July, 2002 in HPPWD Sub Division Killar. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of July, 2002 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of July, 2002 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of July, 2002 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of July, 2002. He further prayed for reinstatement in service w.e.f. month of July, 2002 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 1981 to July, 2002 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.1994 having completed 10 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Mool Raj Upadhayay vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1982 who remained engaged till 2002 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu

thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as haraness case. It is also contended that if petitioner had been terminated in 2002 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri V.K. Dhiman, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D22 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 07.07.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year July, 2002 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

11. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

12. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.40,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1982 who continuously worked till 2002 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1982 to July, 2002. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in July, 2002 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after July, 2002. No reason whatsoever has been assigned for such any action or omission on the part of respondent in

not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record ofpetitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 44 days in the year 1982, 24 days in 1983, 57 days in 1990, 27 days in 1995, 58 days in 1997, 27 days in 1998, 30 days in 2001 and 24.5 days in 2002 and thus a total of his service in 1982 to 2002 in 8 years he had worked for 291.5 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2004 the petitioner had merely worked for 48 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after July, 2002 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1982 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D22. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons

they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D22 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in July, 2002, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of

Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the

demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2002 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed

240 days in calander year and his termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 8 years and actually worked for 291.5 days as per mandays chart on record and that the services of petitioner were disengaged in July, 2002 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given on 18.8.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 51 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.**

21. In view of foregoing discussion, a lump-sum compensation of Rs.40,000/- (Rupees forty thousand only) would be a appropriate relief to which the petitioner is entitled in the facts and

circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within three months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.40,000/- (rupees forty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 161/2015

Date of Institution : 11.04.2015

Date of Decision : 21.03.2016

Shri Sesar Chand s/o Shri Moti, r/o V.P.O. Rei, Tehsil Pangi, District Chamba, H.P.

. .*Petitioner*.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P.
. .*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether the industrial dispute raised by the worker Shri Sesar Chand S/O Shri Moti, R/O V.P.O. Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. vide demand notice dated 25.12.2011 regarding his alleged illegal termination of service during August, 2003 suffers from delay and laches? If not, Whether termination of the services of Shri Sesar Chand S/O Moti, R/O V.P.O. Rei, Tehsil Pangi, District Chamba, H.P. during August, 2003 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1996 who continuously worked till August, 2003 in HPPWD Sub Division Killar. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of August, 2003 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of August, 2003 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination,

no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of August, 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of August, 2003. He further prayed for reinstatement in service w.e.f. month of August, 2003 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 1996 to August, 2003 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2004 having completed 10 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at his own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as haraness case. It is also contended that if petitioner had been terminated in 2003 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Upreti the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 28.08.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year August, 2003 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

13. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

14. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.75,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1996 who continuously worked till 2003 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1996 to August, 2003. He has also stated on oath that no notice

under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in August, 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after August, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 174 days in the year 1996, 115 days in 1997, 122.5 days in 1998, 132 days in 1999, 114 days in 2000, 89.5 days in 2001, 86 days in 2002 and 86 days in 2003 and thus a total of his service in 1996 to 2003 in 8 years he had worked for 919 days in his entire service period. Be it noticed that except the years 1997 to 2003 he had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 86 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999

and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D22. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D22 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in August, 2003, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that

petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
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> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-
>
> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing

the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:- "10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not

adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large. 19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and his termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial

dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 8 years and actually worked for 919 days as per mandays chart on record and that the services of petitioner were disengaged in August, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given on 25.12.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 51 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.**

21. In view of foregoing discussion, a lump-sum compensation of Rs.75,000/- (Rupees seventy five thousand only) would be a appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within three months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.75,000/- (rupees seventy five thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 201/2015

Date of Institution : 04.05.2015

Date of Decision : 21.03.2016

Shri Param Dass s/o Shri Tihru Ram, r/o Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. . .*Petitioner*.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar,Tehsil Pangi, District Chamba, H.P. . .*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Param Dass S/O Shri Tihru Ram, R/O Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 08.08.2010 regarding his alleged illegal termination of service during October, 2001 suffers from delay and latches? If not, Whether termination of the services of Shri Param Dass S/O Shri Tihru Ram, R/O Village Kuthal, P.O. Sach, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during October, 2001 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages,

seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that he had been initially engaged as daily waged beldar on muster roll basis in the month of July, 1997 who continuously worked till September, 2004 in HPPWD Sub Division Killar. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2004 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of September, 2004 when the services of petitioner were terminated by way of oral order, he was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to him and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that he had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or his conduct and even at the time of verbal termination, no charge-sheet had been served upon him and the at the same time, no opportunity of hearing had been afforded to him. The petitioner also alleges that he has remained unemployed ever since his illegal termination from month of September, 2004 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2004. He further prayed for reinstatement in service w.e.f. month of September, 2004 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of his illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between July, 1997 to September, 2004 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2005 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1997 who remained engaged till 2004 but had worked intermittently as petitioner used to come and attend the work at his own sweet will

and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 25 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 26 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at his own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of his own sweet will and the persons mentioned in para no.7 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as haraness case. It is also contended that if petitioner had been terminated in 2004 he would have definitely raised industrial dispute immediately and that after ten years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after his termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/M mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Pramod Upreti, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 28.8.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year October, 2001 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

15. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

16. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.50,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the year 1997 who continuously worked till 2004 at HPPWD Sub Division Killar is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of his own and used to work intermittently as per his own wish and convenience. Admittedly, the reference of appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming his pleadings as stipulated in claim petition. In his affidavit he has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from 1997 to September, 2004. He has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating his service and at the same time no compensation in lieu thereof notice period was paid to him and thus his termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating his services in September, 2004 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that he had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against him but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from his duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2004. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that he used to leave the job in between and attended the work intermittently rather he has claimed that intermittent breaks had been deliberately given to him by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 28 days in the year 1997, 121 days in 1998, 140 days in 1999, 116 days in 2000 and 73 days in 2001 and thus a total of his service in 1997 to 2001 in 5 years he had worked for 478 days in his entire service period. Be it noticed that petitioner had not worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2001 the petitioner had merely worked for 73 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after August, 2004 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1997 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D22. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D22 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled him for regularization of his service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in October, 2001, he had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross examination of the petitioner who has admitted that he had cultivatable land with him and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which he had maintained that he had been earning from agricultural land as well as he has been working as daily wager privately. Reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after his retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has

erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.

13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.

14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it

cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of his acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that he would be reinstated after his acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which he approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the State Government to the Labour Court.** Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2001 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum- Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of

Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub- Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5 Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and his termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. His services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]
>
> Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 5 years and actually worked for 478 days as per mandays chart on record and that the services of petitioner were disengaged in October, 2001 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **six years** i.e. demand notice was given on 27.9.2010. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 47 years who has sufficient spell of life to work and earn his livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex

Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.**

21. In view of foregoing discussion, a lump-sum compensation of Rs.50,000/- (Rupees fifty thousand only) would be a appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within three months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1, 2 and 4 are answered accordingly.

ISSUE NO.3

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.50,000/- (rupees fifty thousand only) to the petitioner in lieu of the reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 158/2015

Date of Institution : 11.04.2015

Date of Decision : 21.03.2016

Smt. Maghi w/o Shri Bhim Ram, r/o V.P.O. Rei, Tehsil Pangi, District Chamba, H.P.

. . *Petitioner*.

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, (Pangi), District Chamba, H.P.

. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Smt. Maghi W/O Shri Bhim Ram, R/O V.P.O. Rei, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. vide demand notice dated 25-12 2011 regarding her alleged illegal termination of service during September, 2003 suffers from delay and laches? If not, Whether termination of the services of Smt. Maghi W/O Shri Bhim Ram, R/O V.P.O. Rei, Tehsil Pangi, District Chamba, H.P. during September, 2003 by the Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts leading to institution of the present claim petition by the petitioner above named reveal that she had been initially engaged as daily waged beldar on muster roll basis in the month of May, 1996 who continuously worked till September, 2003 in HPPWD Sub Division, Sach. Averments made in the petition further revealed that petitioner had worked for 160 days in each calendar year as prescribed for tribal area of Pangi Tehsil District Chamba and became eligible for continuous service envisaged under statutory provisions of Section 25- B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Averments made in the petition revealed that the services of petitioner had interrupted by way of intermittent/artificial breaks given by the respondent/department deliberately and as such breaks are required to be counted as continuous services for the purposes of calculation of 160 days so as for the applicability of Section 25-B of the Act. The grievance of petitioner remains that respondent/department had terminated/disengaged petitioner from daily wage service in the end of September, 2003 by an oral order without any reason whereas several other co-workers who were junior to petitioner had been retained on muster roll and thus the action of respondent/department was stated to be unjustified and malafide. It is alleged that seniority list of daily wage workers working under the respondent had not been circulated till termination/retrenchment of the petitioner and while retrenching the services of petitioner, even principle of 'Last come First go' had not been followed by the department/respondent. The petitioner has named 27 persons who were junior to petitioner and joined service from 1st August, 1997 to 1st September, 2007. In the end of month of

September, 2003 when the services of petitioner were terminated by way of oral order, she was not served with one month notice of retrenchment and at the same time one month's wages in lieu of notice period had also not been paid to her and for said reason termination of the services of petitioner was prima facie illegal and unwarranted. The claimant/petitioner claimed that she had spotless service record who never been charge-sheeted for any act of indiscipline or negligence or her conduct and even at the time of verbal termination, no charge-sheet had been served upon her and the at the same time, no opportunity of hearing had been afforded to her. The petitioner also alleges that she has remained unemployed ever since her illegal termination from month of September, 2003 till the date of institution of present claim petition who had been nowhere gainfully employed and was thus entitled for full back wages. Accordingly alleging respondent to have committed violation of statutory provision of Section 25-F, Section 25-G and Section 25-H of the Industrial Disputes Act, 1947 and Article 14 and 16 of Constitution of India, the petitioner prays for setting aside oral order of termination/retrenchment by the respondent in the month of September, 2003. She further prayed for reinstatement in service w.e.f. month of September, 2003 along-with back wages, seniority including continuity in service as petitioner has remained unemployed since the date of her illegal termination. The petitioner has also prayed that period of intermittent/fictional breaks given time and again during entire service of petitioner between May, 1996 to September, 2003 be counted 160 days continuous service and regularization of the service of petitioner w.e.f. 01.01.2004 having completed 8 years of service and per the policy of HP Govt. in pursuance to judgment of Hon'ble Apex Court titled as Rakesh Kumar vs. State of H.P. and to any other relief petitioner is entitled.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits denied that petitioner had worked for more than 160 days in each calendar year rather clarified by stating that petitioner was engaged as daily waged beldar in 1996 who remained engaged till 2003 but had worked intermittently as petitioner used to come and attend the work at her own sweet will and convenience. Relying upon the mandays chart, it has been categorically pleaded by the respondent that petitioner had not completed 160 days in each calendar year as required for tribal area of Pangi Tehsil. Allegations of fictional breaks given by respondent to the petitioner have been denied. In so far as engagement of persons junior to petitioner mentioned at serial nos. 1 to 24 and 26 in para no. 4 of the claim petition were appointed as per order of Labour Court and at serial nos. 25 & 27 as harness case. On the plea of termination of service of petitioner, respondent specifically alleges that petitioner had left the job at her own will therefore serving of notice or pay in lieu thereof was not required. Reiterating its stand respondent has maintained that petitioner had left the work of her own sweet will and the persons mentioned in para no.4 are stated to have engaged as per direction of the Labour Court-cum-Industrial Tribunal Dharamshala as harness case. It is also contended that if petitioner had been terminated in 2003 she would have definitely raised industrial dispute immediately and that after seven years petitioner is stated to be agitating the matter which is bad on account of delay and laches. It is also contended that since the services of petitioner had not been terminated by the respondent, question of issuance of notice or wages in lieu thereof did not arise and at the same time, there was no necessity for charge-sheet or issuing any notice of petitioner after her termination. It is contended that petitioner was agriculturist and gainfully employed and was thus not entitled for back wages.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition. Further asserted that provisions of Limitation Act did not eclipse the claim of petitioner in totality besides allegation of violation of principle of 'Last come First go' was specifically denied.

6. In order to prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B to PW1/L mandays charts of junior workers and closed evidence. On the other hand, repudiating the evidence led by the petitioner,

respondent examined RW1 Shri Pramod Upreti, the then Executive Engineer, HPPWD Division Killar as RW1 tendered/proved mandays chart of petitioner Ex. RW1/B, mandays chart of other co-workers Ex. RW1/C, Ex. RW1/D1 to Ex. RW1/D21 copy of orders/awards and closed the evidence.

7. I have heard the ld. Authorized Representative of petitioner and ld. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 12.8.2015 for determination which are as under:

1. Whether termination of services of the petitioner by the respondent during the year September, 2003 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

7. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

8. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.70,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Relationship of petitioner having been engaged as daily waged beldar by respondent on muster roll basis in the month of May, 1996 who continuously worked till September, 2003 at HPPWD Sub Division Sach is not in dispute. Admittedly, petitioner was engaged without any written order or settlement of terms and conditions by the respondent. It is equally not in dispute that no written order was passed while terminating service of the petitioner as claim of respondent remains that it had not retrenched petitioner from service who had abandoned the job of her own and used to work intermittently as per her own wish and convenience. Admittedly, the reference of

appropriate govt. does not relate to plea of fictional breaks but only with regard to petitioner's termination from service. In the backdrop of foregoing admitted facts on record, claim of petitioner requires to be adjudicated with a view to determine if petitioner is entitled for relief of reinstatement and back wages along-with seniority and past service benefits and compensation as claimed by him.

12. Stepping into witness box as PW1 has sworn in affidavit Ex. PW1/A reiterating and reaffirming her pleadings as stipulated in claim petition. In her affidavit she has claimed to have worked with the respondent/department for more than 160 days in Pangi Sub Division Chamba District and remained engaged from September, 1996 to 2003. She has also stated on oath that no notice under Section 25-F of the Act was given by the respondent before terminating her service and at the same time no compensation in lieu thereof notice period was paid to her and thus her termination was illegal and void entitling petitioner benefit of reinstatement of service with full back wages and all the other consequential service benefits. The petitioner has further alleged on oath that respondent/department after terminating her services in September, 2003 by oral order had engaged several co-workers who were junior to petitioner were retained in service. Not only this, the persons who were junior to petitioner are stated to have been regularized in service and thus respondent had not followed the mandate of Sections 25-G and 25-H of the Act which was obligatory on its part. The case of petitioner also remains that she had served respondent with due diligence and had spotless service record as respondent/department had never called any explanation or raised charge-sheet against her but even while retrenching petitioner from service, no notice was given. The petitioner has also explained reason for not approaching the authorities under Labour Act and thereafter before this Tribunal, as there existed no road between Chamba town to Pangi Tehsil till 2011 and petitioner had moved before the Labour Officer raising demand notice consequent upon which a failure report was submitted and as the Labour Commissioner did not make reference for industrial dispute raised by petitioner, the petitioner had moved before the Hon'ble High Court by filing CWP where direction was passed for making reference to the Labour Court due to which delay had occurred and same was satisfactorily explained.

13. In so far as plea of abandonment raised by respondent is concerned, the same merits rejection in view of the fact that respondent had failed to produce any record by which it could be established that whenever petitioner absented from her duty as also reflected in mandays chart Ex. RW1/B any notice or letter was ever issued. On this point respondent as RW1 has specifically admitted that whenever petitioner abandoned the job, no notice had been issued. RW1 specifically admitted that no departmental inquiry was initiated against petitioner even after September, 2003. No reason whatsoever has been assigned for such any action or omission on the part of respondent in not initiating any departmental proceedings or making correspondence calling upon the petitioner to join service. This prima facie belies the stand taken by the respondent as abandonment has to be proved like any other fact in issue. The petitioner, on the other hand, as PW1 in cross-examination has specifically denied that she used to leave the job in between and attended the work intermittently rather she has claimed that intermit breaks had been deliberately given to her by the respondent in the service record of petitioner so that petitioner did not complete 160 days of work as required for Pangi Tehsil area and also for applicability of Section 25-B of the Act. As such, in absence of any specific and reliable evidence led by respondent, it would be unsafe to hold that respondent had established plea of abandonment.

14. A bare glance on the mandays chart Ex. RW1/B would reveal that petitioner had worked for 161 days in the year 1996, 107 days in 1997, 136 days in 1998, 134 days in 2000, 52 days in 2001, 69 days in 2002, 51 days in 2002 and 57 days in 2003 and thus a total of her service in 1996 to 2003 in 8 years she had worked for 767 days in her entire service period. Be it noticed that except 1996 to 2003 she had worked for more than 160 days and as there is no reference from the Labour Commissioner, Shimla on the point of artificial breaks, this court is to confine its

findings only with regard to alleged illegal termination. It is evident from mandays chart Ex. RW1/B that in the year 2003 the petitioner had merely worked for 57 days and thus immediately in preceding 12 calendar months from the month of termination of petitioner had not rendered service of 160 days so as to meet requirement of law of having continuous service of one year and thus it was not at all required from respondent to have issued a notice envisaged under Section 25-F of the Act. As such, the respondent is held to have not violated the provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for petitioner has contended with vehemence that large number of workers who were junior to petitioner had been appointed from 01.8.1997 to 07.9.1999 and these workers have been retained in service and regularized. The grievance of petitioner remains that principle of 'Last come First go' was not followed as the juniors were retained and services of petitioner despite being senior was terminated without any valid reason. Ex. PW1/B, Ex. PW1/C, Ex. PW1/D are the year-wise mandays of daily waged workers who were junior to the petitioner and had joined in the year 2000 or thereafter whereas Ex. PW1/E to Ex. PW1/L are the mandays chart of other coworkers. All of these co-workers shown in Ex. PW1/C the year-wise mandays details of workers of Division HPPWD Killar were certainly junior to petitioner who were given sufficient work existing in those years more than 200 days in a year whereas the petitioner had been not given muster roll for the whole month. Ex. RW1/C also established that all the co-workers shown in this document have worked for more than 160 days in most of the years although they were junior to petitioner. Evidently, there is no iota of evidence of respondent establishing that petitioner was called upon to join for service at any time after September, 2003 even at the time when junior persons were reengaged. That being so the respondent had certainly violated the provisions of Section 25-G of the Act as the juniors workers mentioned in para no.3 of the affidavit were retained whereas petitioner was senior from these co-workers having joined service in 1996 was terminated and even thereafter respondent omitted to afford opportunity to petitioner for reemployment for work which also violates the provisions of Section 25-H of the Act. Ld. Authorized Representative for petitioner has placed reliance upon judgment of **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** in which Hon'ble Apex Court has held that for the applicability of Section 25-G and 25-H of the Act, **there was no necessity of claimant/petitioner to have worked for 240 days as in case of provisions of Section 25-F of the Act.**

16. Repudiating claim of petitioner, the respondent, on the other hand, has made futile attempt to justify engagement of junior workers and their retention in service on the basis of orders of Labour Court-cum-Industrial Tribunal as well as Hon'ble High Court of H.P. as reflected in Ex. RW1/D1 to Ex RW1/D21. These judgments/orders have been gone through which revealed that respondent had wrongly terminated the services of those claimant/petitioner and for said reasons they were directed to be reinstated. Thus, plea that persons were directed to be appointed in pursuance to awards/orders Ext. Rw1/D1 to Ex. RW1/D21 were primarily on the basis of court orders would not defeat the claim of the petitioner as status of these person being junior to petitioner does not get negatived. As such, even when petitioner is proved to have not worked for more than 160 days in preceding 8 years which entitled her for regularization of her service per government policy, yet respondent is not absolved from its accountability of provisions of Section 25-G and 25-H of the Act and as such it is held that respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act.

17. Ld. Authorized Representative for petitioner has contended that after petitioner's termination in September, 2003, she had remained unemployed and was not earning anything thereafter as such was entitled for full back wages. Repudiating the arguments of ld. Authorized Representative of petitioner, ld. Dy. D.A. for the State has taken this court through cross examination of the petitioner who has admitted that she had cultivatable land with her and also worked a private labourer. Thus, plea of having remained not gainfully employed gets belied admission of petitioner in cross-examination in which she had maintained that she had been earning from agricultural land as well as she has been working as daily wager privately. Reliance has been

placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that '**term gainfully employment would also include self employment wherefrom income is generated. It was = income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from her agricultural and manual pursuits, the same were sufficient to maintain her and her family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, she cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for her livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-G and Section 25-H of the Act although remained gainfully employed after her retrenchment. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period she was out of job on being terminated by the respondent.

18. Lastly, Ld. Dy. D.A. for State has contended with vehemence that there is inordinate and explained delay which disentitles petitioner relief claimed for by him. On the other hand, ld. Authorized Representative for the petitioner has relied upon the judgment of Hon'ble Apex Court titled **Raghubir Singh vs. General Manager, Haryana Roadways, Hissar** reported in **2014 Lab IC 4266 (SC)** and the relevant paras of the judgment are produced below for reference:

> "12. Therefore, in our considered view, the observations made by this Court in the Rajasthan State Agriculture Marketing Board case (supra) upon which the learned Additional Advocate General for the State of Haryana has placed reliance cannot be applied to the fact situation of the case on hand, for the reason that the Labour Court has erroneously rejected the reference without judiciously considering all the relevant factors of the case particularly the points of dispute referred to it and answered the 2nd issue regarding the reference being barred by limitation but not on the merits of the case. The said decision has no application to the fact situation and also for the reason the catena of decisions of this Court referred to supra, wherein this Court has categorically held that the provisions of Limitation Act under Article 137 has no application to make reference by the appropriate government to the Labour Court/Industrial Tribunal for adjudication of existing industrial dispute between workmen and the employer.
>
> 13. **In the case on hand, no doubt there is a delay in raising the dispute by the appellant; the Labour Court nevertheless has the power to mould the relief accordingly. At the time of adjudication, if the dispute referred to the Labour Court is not adjudicated by it, it does not mean that the dispute ceases to exist.** The appropriate government in exercise of its statutory power under Section 10(1)(c) of the Act can refer the industrial dispute, between the parties, at any time, to either the jurisdictional Labour Court/Industrial Tribunal as interpreted by this Court in the Avon Services case referred to supra. Therefore, the State Government has rightly exercised its power under Section 10(1)(c) of the Act and referred the points of dispute to the Labour Court as the same are in accordance with the law laid down by this Court in Avon Services & Sapan Kumar Pandit cases referred to supra.
>
> 14. **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka**[4] it was held by this Court as follows-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives herself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis laid by the Court) In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against her and secondly, the respondent had assured the workman that she would be reinstated after her acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from her employer.

15. In the case of Ajaib Singh v. The Sirhind Co-Operative Marketing Cum- Processing Service Society Limited & Anr.[5] this Court has opined that relief cannot be denied to the workman merely on the ground of delay, stating that:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay in shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date she raised the demand regarding her illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages....." (Emphasis laid by the Court)

16. Hence, we are of the opinion, having regard to the fact and circumstances of the case that there is no delay or latches on the part of the workman from the date of her acquittal in the criminal case. Thereafter, upon failure of the respondent in adhering to the assurance given to the workman that she would be reinstated after her acquittal from the criminal case, the workman approached the conciliation officer and the State Government to make a reference to the Labour Court for adjudication of the dispute with regard to the order of dismissal passed by the respondent. Keeping in mind the date of acquittal of the appellant and the date on which she approached the conciliation officer by raising the dispute, since the respondent had not adhered to its assurance, the State Government had rightly referred the dispute for its adjudication. Therefore it cannot be said that there was a delay on the part of the appellant in raising the dispute and getting it referred to the Labour Court by the State Government.

17. **Further, the Labour Court on an erroneous assumption of law framed the additional issue regarding the limitation in raising the dispute and its reference by the**

State Government to the Labour Court. Thus, the Labour Court has ignored the legal principles laid down by this Court in the cases referred to supra. The award passed by the Labour Court was accepted erroneously by both the learned single Judge and the Division Bench of the High Court by dismissing the Civil Writ Petition & the Letters Patent Appeal without examining the case in its proper perspective, keeping in view the power of the State Government under Section 10(1)(c) and the object and intendment of the Act. Not adjudicating the existing industrial dispute on merits between the parties referred to it may lead to disruption of industrial peace and harmony, which is the foremost important aspect in Industrial Jurisprudence as the same would affect the public interest at large.

19. Ld. counsel representing respondent department has also contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on 2003 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketingcum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act.

20. Relying upon the aforestated judgment, it has been contended that claim of petitioner cannot be defeated on the point of delay and laches. Repudiating arguments advanced by ld. Authorized Representative for petitioner, ld. Dy. D.A. has placed reliance upon the judgment of Hon'ble Apex Court titled as **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal [2013 (139) FLR 125],** the relevant para of the judgment are produced below for reference:

> Industrial Disputes Act, 1947-Sections 25-F and 10- Limitation Act, 1963- Section 5- Industrial dispute- Termination of service-Finding of Lboaur Court that workman had completed 240 days in calander year and her termination was in violation o section 25-F of the I.D.Act- Wrokman worked from 1.11.1984 to 17.2.1986 in all 286 days during employment. her services terminated on 18.2.1986. Industrial dispute raised after 6 years of termination. Admitted delay of 6 years not kept in view by the Labour Court- Judicial discretion exercised by the Labour Court flawed and unsustainable. Reinstatement of the workman not the appropriate relief. In lieu of reinstatement compensation of Rs.one lac directed to be paid to the workman by the appellantemployer within six weeks failing which interest @ workman 9% p.a. will be payable. [Paras 21 and 22]

Limitation Act, 1963. Section 5- Industrial Disputes Act, 1947- Section 25-F- Termination of service- **Industrial dispute raised after six years- Limitation Act not applicable to reference made under the I.D. Act-Delay in raising industrial disputes definitely an important circumstances which the Labour Court must keep in view before granting relief".**

I have gone through the rival contention of the ld. Authorized Representative as well as ld. Dy. D.A. for State. Keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above it is held that delay in raising industrial dispute is definitely an important circumstance and court has to keep in mind while exercising discretion. In para nos. 20 and 21 of judgment 2013 supra has referred to **Gitam Singh's** case reported in **2013 (136) FLR 893 (SC)**

titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was observed by the Hon'ble Apex Court in judgment (2013 supra) before that workman had worked for 286 days and had raised industrial dispute in 1992 whereas his services have been terminated in 1986 and he raised industrial dispute after **six years**. The Hon'ble Apex Court has held that though compensation awarded by Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench **but surely reinstatement of the workman in the facts and circumstances is not the appropriate relief** and thus Hon'ble Apex Court awarded a lump-sum of Rs.1 lakh along-with interest @ 9% per annum if the respondent failed to make payment of compensation within six weeks from the date of judgment. In the case in hand before this court factors which have weighed are that the petitioner in all remained engaged for about 8 years and actually worked for 767 days as per mandays chart on record and that the services of petitioner were disengaged in September, 2003 who worked as non skilled worker and had raised industrial dispute by issuance of demand notice after about **eight years** i.e. demand notice was given on 25.12.2011. It is also pertinent to mention here that petitioner on the date of filing claim petition was ageing 40 years who has sufficient spell of life to work and earn her livelihood. Taking into consideration factors mentioned above in pursuance to judgments of Hon'ble Apex Court petitioner would not be entitled either for reinstatement or for back wages but compensation a lump-sum would be appropriate relief in view of judgment **2013 (139) FLR 25** (SC). The judgments relied upon by ld. Authorized Representative for petitioner on the matter of delay and laches is more or less settled law that claim of the petitioner could not be solely declined on the ground of delay and laches. Similarly, judgment of Hon'ble Apex Court in **2014** titled as **Raghubir Singh's** case also does not come to the rescue of the petitioner as in this judgment also the Hon'ble Apex Court has reiterated the mandate as given by the Hon'ble Apex Court in previous judgment in the year **2013** i.e. **Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division Kota and Mohan Lal's** case. Similar view was reiterated by the Hon'ble Apex Court in judgment titled as **Vice Chancellor, Lucknow University, Lucknow, Uttar Pradesh v. Akhilesh Kumar Khare & another** reported in **AIR 2015 SC 3473.**

21. In view of foregoing discussion, a lump-sum compensation of Rs.70,000/- (Rupees seventy thousand only) would be a appropriate relief to which the petitioner is entitled in the facts and circumstances of the case as stated above. It is further made clear that amount of compensation shall be paid within three months from the date of Award failing which the petitioner would be entitled for interest @ 9% per annum from date of Award and its realization. Issues no. 1,2 and 4 are answered accordingly.

ISSUE NO.3

22. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

23. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.70,000/- (Rupees seventy thousand only) to the petitioner in lieu of the

reinstatement in services as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 136/2015

Date of Institution : 21.03.2015

Date of decision : 21.03.2016

Shri Nand Lal s/o Shri Bachanu Ram, r/o Village and P.O. Nakrana, Tehsil Shree Naina Devi Ji, District Bilaspur, H.P. . .*Petitioner*.

Versus

The Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P. . .*Respondent*.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether the termination of the services of Shri Nand Lal S/O Shri Bachanu Ram, R/O Village and Post Office Nakrana, Tehsil Shree Naina Devi Ji, District Bilaspur, H.P. by the

Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P. w.e.f. 01.01.2009 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and relief the above workman is entitled to?"

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that claimant/petitioner abovenamed had been engaged as daily wager in 2008 by Range Forest Wild Life Shri Naina Deviji, District Bilaspur, H.P. where he continued to worked till January, 2009. The grievance of petitioner remains that respondent had without any rhyme and reason and serving any notice orally terminated his services in January, 2009. It is specifically alleged that ignoring the rights of claimant/petitioner respondent had not prepared seniority list of daily
waged workers as on 31st July, 2010 and did not reflect petitioner's name in the seniority list according to which several workers namely S/Sh. Ashok Kumar, Madan Lal, Rajesh Kumar, Sudesh Kumar, Balwant Singh, Anil Kumar, Satpal Singh, Pratap Chand, Ravinder Kumar, Bantu Singh, Sant Ram, Pankaj Walia, Vijay Kumar, Rajesh Kumar, Naresh Kumar, Aman Kumar, Praveen Kumar and Surinder Kumar were still employed and were junior to petitioner. Thus, alleging to have not followed the principle of 'last come first go' envisaged under Section 25-H and 25-G of the Industrial Disputes Act, 1947 services of petitioner had been disengaged. At the same time, provisions of Section 25-F too had not been followed which was also an unfair labour practice as petitioner had rendered service of 240 days immediately prior to his termination. The petitioner further alleges that he was unemployed who had no source of income of livelihood. Accordingly, petitioner prays for reinstatement with full back wages and all consequential benefits admissible to him. 4. The respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits admitted that petitioner had been engaged initially in July, 2008 in Shri Naina Deviji Wild Life Range as casual labourer where seasonal work was being carried out through volunteers and local villagers and that petitioner was never engaged as daily wager so question of retrenching him from work did not arise. It is also contended that petitioner had been attending the work intermittently as was clear from mandays chart on record. It is specifically alleged that petitioner was not attending the work regularly rather he visited site of work as per his own convenience and that no fictional breaks had ever been given by the respondent/department. It also remains the case of respondent that the work which was being carried out in Shri Naina Deviji Wild Life was seasonal work and therefore the question of working as daily wager did not arise. It is admitted that name of the petitioner did not figure in the seniority list due to the reason that petitioner was employed as casual labourer and had not worked continuously for 240 days in a year. It has been emphatically denied that petitioner had worked for 240 days in any calendar year immediately preceding his termination and for said reason respondent cannot be stated to have violated Section 25-F of the Industrial Disputes Act. Since the petitioner himself has allegedly abandoned the work who had not completed 240 days, there was not requirement of showing or reflecting his name in the seniority list or serving any notice under Section 25-F of the Industrial Disputes Act. The petitioner is stated to have been gainfully employed as he himself engaged in agricultural work which was cultivable land wherefrom petitioner earned his livelihood. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of mandays chart of Sh. Sundar Ram, Ex. PW1/C copy of mandays chart of Sh. Garja Ram, Ex. PW1/D copy of seniority list, Ex. PW1/E

copy of CWP No. 2261/2014 decided on 18.10.2004 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri H.K. Sarwata, Divisional Forest Officer, Forest Division Bilaspur as RW1 tendered/proved her affidavit Ex. RW1/A, Mandays chart Ex. RW1/B, Seniority list Ex. RW1/C, copy of letter dated 11.12.1997 Ex. RW1/D, copy of letter dated 9.5.2000 Ex. RW1/E and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.9.2015 for determination which are as under:

1. Whether termination of the services of the petitioner by the respondent w.e.f. 01.01.2009 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable in the present form? . .*OPR*.

4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed.

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that mandays chart Ex. RW1/B relied upon by the respondent reflects total number of days for petitioner worked i.e. from July, 2008 to December, 2008. As per this document on record, petitioner is shown to have worked for 46 days in the month of w.e.f. July, 2008 to December, 2008 and thereafter did not work with the respondent. A bare glance on this document would reveal that petitioner had not worked 240 days w.e.f. July, 2008 to December, 2008 in this year it can be seen from mandays chart aforestated that petitioner had not worked for 240 days as petitioner is shown to have worked for 46 days only. As such, when petitioner had totally worked for 46 days, plea of having worked for 240 days gets falsified and thus provisions of Section 25-F of Industrial Disputes Act are not attracted.

12. In so far as violation of Section 25-G and Section 25-H of the Industrial Disputes Act are concerned, it would be relevant to mention here that Ex. PW1/C and Ex. RW1/C are the same

document i.e. seniority list of the daily wagers from 1999 onwards to 31.7.2010 in respect of Wild Life Division Hamirpur which showed name of petitioner figuring at serial no.19. In the year 2008, petitioner is shown to have worked for 46 days. After the name of claimant/petitioner this seniority list referred to above further stipulates names of workers upto serial no.38 who are stated to be junior to petitioner and retained in service while the services of the petitioner had been retrenched. The fact that about 18 workers whose names are enumerated in para no.5 of the affidavit Ex. PW1/A of petitioner were junior and still employed has not been repudiated by Ld. Dy. D.A. while cross-examining the petitioner assumes significance. Not only this, as per mandays chart Ex. PW1/B Sunder Ram is shown to have been engaged in 2009 who continued to work in 2013. Similarly, Ex. PW1/C in the mandays chart of Garja Ram who is shown to have engaged by issuing muster roll in 2009 who too is shown to have worked till upto 15.6.2013. Abovestated documents clearly show that both these daily waged workmen were appointed after the year of termination in January, 2009. On the other hand, respondent RW1 Shri H.K. Sarwata in his cross-examination admitted that the workers mentioned in Seniority list Ex. P1 shows that the workers figuring at serial nos. 8,9,19, 20 and 21 were junior to the petitioner. He further admitted that no show cause notice was issued to the petitioner when he had left the job. Although, admitted that the petitioner was engaged in the year 2008. Minor scrutiny of testimony of RW1 would further reveal that petitioner had been initially engaged in Hamirpur Forest Division whereas petitioner was factually initially engaged by Forest Range Officer, Shri Naina Deviji but this aspect ceases to have significance on the merits of case in as much as respondent in its reply nowhere alleged about bifurcation of Division of Hamirpur Division and Bilaspur and preparation of separate seniority list. Thus, arguments of Ld. Dy. D.A. are not supported with corresponding pleadings and evidence on record. In **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union,** reported in **2015 LLR 337** Hon'ble Apex Court has in unambiguous terms has held that **non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act.** In the case in hand, omission of respondent in preparation seniority list of Bilaspur Division and failing to reflect his name in said seniority list by respondent clearly violates Section 25-G of Industrial Disputes Act.

13. As has come in the evidence of the parties that in the seniority list as on 31.12.2014 relating to Bilaspur Division, the name of petitioner has not been mentioned in the list Ex. P1 prepared by respondent himself clearly vitiate of provisions of Section 25-G of the Industrial Disputes Act in view of law laid down by the Hon'ble Apex Court (2015 supra). Otherwise also, from testimony of petitioner coupled with seniority list, an irresistible inference which may be drawn is that several junior persons whose names were mentioned in para no.5 of affidavit of petitioner were still working with the respondent whereas the services of petitioner were illegally terminated without serving any notice by the respondent. Thus, principle of 'Last come First go'envisaged under Section 25-G was not followed. It is settled law for applicability of Section 25-G of Industrial Disputes Act that it is not necessary that claimant/petitioner ought to have completed 240 days in a year as has been held by the Hon'ble Apex Court in **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. Similarly, while recruiting or engaging new hands even petitioner was not afforded an opportunity to work rather respondent in his reply admitted that he failed to enter the name of the petitioner as stated above. Be it noticed that respondent has made inconsistent plea of work of the Wild Life Bilaspur Division was stated to be seasonal in nature and the other plea that petitioner himself abandoned the job. The case of petitioner remain that the petitioner abandoned the job of his own who used to attend the work intermittently of his own whims and convenience and respondent has not issued any notice calling upon the petitioner to join of his duties moreso when petitioner had not completed 240 days. By not issuing any notice or charge-sheet inference of abandonment cannot be drawn which was to be proved like any other fact by leading cogent evidence. Having not issued any legal notice to the petitioner or omitted to raise charge-sheet belies the stand of respondent on abandonment of the job by respondent and for said reason plea of petitioner has to be accepted that services of petitioner have been illegally terminated

by verbal order in the year January, 2009. In view of the foregoing discussions, it is held that petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act however petitioner has duly proved violation of Section 25- G and Section 25-H of the Act by the respondent. Issue no.1 is thus answered in affirmative holding that termination of services of petitioner during January, 2009 by Divisional Forest Officer, Hamirpur is illegal and unjustified.

14. With regard to source of income of petitioner ever since termination of his services, it is relevant to mention here that petitioner although in claim petition as well as affidavit has mentioned that he remained unemployed who had no source of income whatsoever but in the witness box in his cross-examination, he has admitted that he nowadays worked privately who had sufficient and reasonable income from private work. Thus, it cannot be stated that petitioner was not gainfully employed. However, keeping in view the manner petitioner was verbally disengaged from his job he would be liable to reinstatement by the respondent with his seniority and continuity in service **except back wages**. Both these issues are answered accordingly.

ISSUE NO.3

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

16. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 134/2015

Date of Institution : 21.03.2015

Date of decision : 21.03.2016

Shri Budhi Singh s/o Shri Goverdhan Singh r/o Village and P.O. Nakrana, Tehsil Shree Naina Devi Jee, District Bilaspur, H.P. . .*Petitioner*.

Versus

The Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P. . .*Respondent*.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether the termination of services of Shri Budhi Singh S/O Shri Goverdhan Singh, R/O Village and Post Office Nakrana, Tehsil Shree Naina Devi Jee, District Bilaspur, H.P. by the Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P. w.e.f. 01.01.2009 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and relief the above workman is entitled to?"

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that claimant/petitioner abovenamed had been engaged as daily wager in 1998 and he worked for three months and in the year 2007 he had worked for two months i.e. June and July rather in the year 2008 he had worked for whole month with the Range Forest Wild Life Shri Naina Deviji, District Bilaspur, H.P. where he continued to worked till January, 2009. The grievance of petitioner remains that respondent had without any rhyme and reason and serving any notice orally terminated his services in January, 2009. It is specifically alleged that ignoring the rights of claimant/petitioner respondent had not prepared seniority list of daily waged workers as on 31st July, 2010 and did not reflect petitioner's name in the seniority list according to which several workers namely S/Sh. Ashok Kumar, Madan Lal, Rajesh Kumar, Sudesh Kumar, Balwant Singh, Anil Kumar, Satpal Singh, Pratap Chand, Ravinder Kumar, Bantu Singh, Sant Ram, Pankaj Walia, Vijay Kumar, Rajesh Kumar, Naresh Kumar, Aman Kumar, Praveen Kumar and Surinder Kumar were still employed and were junior to petitioner. Thus, alleging to have not followed the principle of 'last come first go' envisaged under Section 25-H and 25-G of the Industrial Disputes Act, 1947 and the services of petitioner had been disengaged. At the same time, provisions of Section 25-F too had not been followed which was also an unfair labour practice as petitioner had rendered service of 240 days immediately prior to his termination. The petitioner further alleges that he was unemployed who had no source of income of livelihood. Accordingly, petitioner prays for reinstatement with full back wages and all consequential benefits admissible to him.

4. The respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits admitted that petitioner had been engaged initially in March, 2008 in Shri Naina Deviji Wild Life Range as casual labourer where seasonal work was

being carried out through volunteers and local villagers and that petitioner was never engaged as daily wager so question of retrenching him from work did not arise. It is also contended that petitioner had been attending the work intermittently as was clear from mandays chart on record. It is specifically alleged that petitioner was not attending the work regularly rather he visited site of work as per his own convenience and that no fictional breaks had ever been given by the respondent/department. It also remains the case of respondent that the work which was being carried out in Shri Naina Deviji Wild Life was seasonal work and therefore the question of working as daily wager did not arise. It is admitted that name of the petitioner did not figure in the seniority list due to the reason that petitioner was employed as casual labourer and had not worked continuously for 240 days in a year. It has been emphatically denied that petitioner had worked for 240 days in any calendar year immediately preceding his termination and for said reason respondent cannot be stated to have violated Section 25-F of the Industrial Disputes Act. Since the petitioner himself has allegedly abandoned the work who had not completed 240 days, there was not requirement of showing or reflecting his name in the seniority list or serving any notice under Section 25-F of the Industrial Disputes Act. The petitioner is stated to have been gainfully employed as he himself engaged in agricultural work which was cultivable land wherefrom petitioner earned his livelihood. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of mandays chart of Sh. Sundar Ram, Ex. PW1/C copy of mandays chart of Sh. Garja Ram, Ex. PW1/D copy of seniority list, Ex. PW1/E copy of CWP No. 2261/2014 decided on 18.10.2004 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri H.K. Sarwata, Divisional Forest Officer, Forest Division Bilaspur as RW1 tendered/proved her affidavit Ex. RW1/A, Mandays chart Ex. RW1/B, Seniority list Ex. RW1/C, copy of letter dated 11.12.1997 Ex. RW1/D, copy of letter dated 9.5.2000 Ex. RW1/E and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.9.2015 for determination which are as under:

1. Whether termination of the services of the petitioner by the respondent w.e.f. 01.01.2009 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable in the present form? . .*OPR*.

4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed.

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that mandays chart Ex. RW1/B relied upon by the respondent reflects total number of days for petitioner worked i.e. from March, 2008 to December, 2008. As per this document on record, petitioner is shown to have worked for 104 days in the month of w.e.f. March, 2008 to December, 2008 and thereafter did not work with the respondent. A bare glance on this document would reveal that petitioner had not worked 240 days w.e.f. March, 2008 to December, 2008 in this year it can be seen from mandays chart aforestated that petitioner had not worked for 240 days as petitioner is shown to have worked for 72 days only. As such, when petitioner had totally worked for 104 days, plea of having worked for 240 days gets falsified and thus provisions of Section 25-F of Industrial Disputes Act are not attracted.

12. In so far as violation of Section 25-G and Section 25-H of the Industrial Disputes Act are concerned, it would be relevant to mention here that Ex. PW1/C and Ex. RW1/C are the same document i.e. seniority list of the daily wagers from 1999 onwards to 31.7.2010 in respect of Wild Life Division Hamirpur which showed name of petitioner figuring at serial no.16. In the year 2008, petitioner is shown to have worked for 104 days. After the name of claimant/petitioner this seniority list referred to above further stipulates names of workers upto serial no.38 who are stated to be junior to petitioner and retained in service while the services of the petitioner had been retrenched. The fact that about 21 workers whose names are enumerated in para no.5 of the affidavit Ex. PW1/A of petitioner were junior and still employed has not been repudiated by Ld. Dy. D.A. while cross-examining the petitioner assumes significance. Not only this, as per mandays chart Ex. PW1/B Sunder Ram is shown to have been engaged in 2009 who continued to work in 2013. Similarly, Ex. PW1/C in the mandays chart of Garja Ram who is shown to have engaged by issuing muster roll in 2009 who too is shown to have worked till upto 15.6.2013. Abovestated documents clearly show that both these daily waged workmen were appointed after the year of termination in January, 2009. On the other hand, respondent RW1 Shri H.K. Sarwata in his cross-examination admitted that the workers mentioned in Seniority list Ex. P1 shows that the workers figuring at serial nos. 8,9,19, 20 and 21 were junior to the petitioner. He further admitted that no show cause notice was issued to the petitioner when he had left the job. Although, admitted that the petitioner was engaged in the year 2008. Minor scrutiny of testimony of RW1 would further reveal that petitioner had been initially engaged in Hamirpur Forest Division whereas petitioner was factually initially engaged by Forest Range Officer, Shri Naina Deviji but this aspect ceases to have significance on the merits of case in as much as respondent in its reply nowhere alleged about bifurcation of Division of Hamirpur Division and Bilaspur and preparation of separate seniority list. Thus, arguments of Ld. Dy. D.A. are not supported with corresponding pleadings and evidence on record. In **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union,** reported in **2015 LLR 337** Hon'ble Apex Court has in unambiguous terms has held that **non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act.** In the case in hand, omission of respondent in preparation seniority list of Bilaspur Division and failing to reflect his name in said seniority list by respondent clearly violates Section 25-G of Industrial Disputes Act.

13. As has come in the evidence of the parties that in the seniority list as on 31.12.2014 relating to Bilaspur Division, the name of petitioner has not been mentioned in the list Ex. P1 prepared by respondent himself clearly vitiate of provisions of Section 25-G of the Industrial Disputes Act in view of law laid down by the Hon'ble Apex Court (2015 supra). Otherwise also, from testimony of petitioner coupled with seniority list, an irresistible inference which may be drawn is that several junior persons whose names were mentioned in para no.5 of affidavit of petitioner were still working with the respondent whereas the services of petitioner were illegally terminated without serving any notice by the respondent. Thus, principle of 'Last come First go' envisaged under Section 25-G was not followed. It is settled law for applicability of Section 25 G of Industrial Disputes Act that it is not necessary that claimant/petitioner ought to have completed 240 days in a year as has been held by the Hon'ble Apex Court in **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. Similarly, while recruiting or engaging new hands even petitioner was not afforded an opportunity to work rather respondent in his reply admitted that he failed to enter the name of the petitioner as stated above. Be it noticed that respondent has made inconsistent plea of work of the Wild Life Bilaspur Division was stated to be seasonal in nature and the other plea that petitioner himself abandoned the job. The case of petitioner remain that the petitioner abandoned the job of his own who used to attend the work intermittently of his own whims and convenience and respondent has not issued any notice calling upon the petitioner to join of his duties moreso when petitioner had not completed 240 days. By not issuing any notice or charge-sheet inference of abandonment cannot be drawn which was to be proved like any other fact by leading cogent evidence. Having not issued any legal notice to the petitioner or omitted to raise charge-sheet belies the stand of respondent on abandonment of the job by respondent and for said reason plea of petitioner has to be accepted that services of petitioner have been illegally terminated by verbal order in the year January, 2009. In view of the foregoing discussions, it is held that petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act however petitioner has duly proved violation of Section 25- G and Section 25-H of the Act by the respondent. Issue no.1 is thus answered in affirmative holding that termination of services of petitioner during January, 2009 by Divisional Forest Officer, Hamirpur is illegal and unjustified.

14. With regard to source of income of petitioner ever since termination of his services, it is relevant to mention here that petitioner although in claim petition as well as affidavit has mentioned that he remained unemployed who had no source of income whatsoever but in the witness box in his cross-examination, he has admitted that he nowadays worked privately who had sufficient and reasonable income from private work. Thus, it cannot be stated that petitioner was not gainfully employed. However, keeping in view the manner petitioner was verbally disengaged from his job he would be liable to reinstatement by the respondent with his seniority and continuity in service **except back wages**. Both these issues are answered accordingly.

ISSUE NO.3

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

16. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUMINDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 135/2015

Date of Institution : 21.03.2015

Date of decision : 21.03.2016

Shri Rakesh Kumar s/o Shri Ranjeet Singh, r/o Village and P.O. Nakrana, Tehsil Shree Naina Devi Jee, District Bilaspur, H.P. . .*Petitioner*.

Versus

The Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P. . .*Respondent*.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether the termination of services of Shri Rakesh Kumar S/O Shri Ranjeet Singh, R/O Village and P.O. Nakrana, Tehsil Shree Naina Devi Jee, District Bilaspur, H.P. by the Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P. w.e.f. 01.01.2009 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and relief the above workman is entitled to?"

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that claimant/petitioner abovenamed had been engaged as daily wager in 2008 by Range Forest Wild Life Shri Naina Deviji, District Bilaspur, H.P. where he continued to worked till January, 2009. The grievance of petitioner remains that respondent had without any rhyme and reason and serving any notice orally terminated his services in January, 2009. It is alleged that in May, 2011 respondent had stopped muster roll however he continued to engage junior workers which was unfair labour practice. It is specifically alleged that ignoring the rights of claimant/petitioner respondent had not prepared seniority list of daily waged workers as on 31st July, 2010 and did not reflect petitioner's name in the seniority list according to which several workers namely S/Sh. Ashok Kumar, Madan Lal, Rajesh Kumar, Sudesh Kumar, Balwant Singh, Anil Kumar, Satpal Singh, Pratap Chand, Ravinder Kumar, Bantu Singh, Sant Ram, Pankaj Walia, Vijay Kumar, Rajesh Kumar, Naresh Kumar, Aman Kumar, Praveen Kumar and Surinder Kumar were still employed and were junior to petitioner. Thus, alleging to have not followed the principle of 'last come first go' envisaged under Section 25-H and 25-G of the Industrial Disputes Act, 1947 services of petitioner had been disengaged. At the same time, provisions of Section 25-F too had not been followed which was also an unfair labour practice as petitioner had rendered service of 240 days immediately prior to his termination. The petitioner further alleges that he was unemployed who had no source of income of livelihood. Accordingly, petitioner prays for reinstatement with full back wages and all consequential benefits admissible to him.

4. The respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits admitted that petitioner had been engaged initially in June, 2008 in Shri Naina Deviji Wild Life Range as casual labourer where seasonal work was being carried out through volunteers and local villagers and that petitioner was never engaged as daily wager so question of retrenching him from work did not arise. It is also contended that petitioner had been attending the work intermittently as was clear from mandays chart on record. It is specifically alleged that petitioner was not attending the work regularly rather he visited site of work as per his own convenience and that no fictional breaks had ever been given by the respondent/department. It also remains the case of respondent that the work which was being carried out in Shri Naina Deviji Wild Life was seasonal work and therefore the question of working as daily wager did not arise. It is admitted that name of the petitioner did not figure in the seniority list due to the reason that petitioner was employed as casual labourer and had not worked continuously for 240 days in a year. It has been emphatically denied that petitioner had worked for 240 days in any calendar year immediately preceding his termination and for said reason respondent cannot be stated to have violated Section 25-F of Industrial Disputes Act. Since the petitioner himself has allegedly abandoned the work who had not completed 240 days, there was not requirement of showing or reflecting his name in the seniority list or serving any notice under Section 25-F of the Industrial Disputes Act. The petitioner is stated to have been gainfully employed as he himself engaged in agricultural work which was cultivable land wherefrom petitioner earned his livelihood. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of mandays chart of Sh. Sundar Ram, Ex. PW1/C copy of mandays chart of Sh. Garja Ram, Ex. PW1/D copy of seniority list, Ex. PW1/E copy of CWP No. 2261/2014 decided on 18.10.2004 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri H.K. Sarwata, Divisional Forest Officer, Forest Division Bilaspur as RW1 tendered/proved her affidavit Ex. RW1/A, Mandays chart Ex. RW1/B, Seniority list Ex. RW1/C, copy of letter dated 11.12.1997 Ex. RW1/D, copy of letter dated 9.5.2000 Ex. RW1/E and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.9.2015 for determination which are as under:

1. Whether termination of the services of the petitioner by the respondent w.e.f. 01.01.2009 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable in the present form? . .*OPR*.

4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed.

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that mandays chart Ex. RW1/B relied upon by the respondent reflects total number of days for petitioner worked i.e. from June, 2008 to December, 2008. As per this document on record, petitioner is shown to have worked for 72 days in the month of w.e.f. June, 2008 to December, 2008 and thereafter did not work with the respondent. A bare glance on this document would reveal that petitioner had not worked 240 days w.e.f. June, 2008 to December, 2008 in this year it can be seen from mandays chart aforestated that petitioner had not worked for 240 days as petitioner is shown to have worked for 72 days only. As such, when petitioner had totally worked for 72 days, plea of having worked for 240 days gets falsified and thus provisions of Section 25-F of Industrial Disputes Act are not attracted.

12. In so far as violation of Section 25-G and Section 25-H of the Industrial Disputes Act are concerned, it would be relevant to mention here that Ex. PW1/C and Ex. RW1/C are the same document i.e. seniority list of the daily wagers from 1999 onwards to 31.7.2010 in respect of Wild Life Division Hamirpur which showed name of petitioner figuring at serial no.18. In the year 2008, petitioner is shown to have worked for 72 days. After the name of claimant/petitioner this seniority list referred to above further stipulates names of workers upto serial no.38 who are stated to be junior to petitioner and retained in service while the services of the petitioner had been retrenched. The fact that about 17 workers whose names are enumerated in para no.5 of the affidavit Ex.

PW1/A of petitioner were junior and still employed has not been repudiated by Ld. Dy. D.A. while cross-examining the petitioner assumes significance. Not only this, as per mandays chart Ex. PW1/B Sunder Ram is shown to have been engaged in 2009 who continued to work in 2013. Similarly, Ex. PW1/C in the mandays chart of Garja Ram who is shown to have engaged by issuing muster roll in 2009 who too is shown to have worked till upto 15.6.2013. Abovestated documents clearly show that both these daily waged workmen were appointed after the year of termination in January, 2009. On the other hand, respondent RW1 Shri H.K. Sarwata in his cross-examination admitted that the workers mentioned in Seniority list Ex. P1 shows that the workers figuring at serial nos. 8,9,19, 20 and 21 were junior to the petitioner. He further admitted that no show cause notice was issued to the petitioner when he had left the job. Although, admitted that the petitioner was engaged in the year 2008. Minor scrutiny of testimony of RW1 further reveal that petitioner had been initially engaged in Hamirpur Forest Division whereas petitioner was factually initially engaged by Forest Range Officer, Shri Naina Deviji but this aspect ceases to have significance on the merits of case in as much as respondent in its reply nowhere alleged about bifurcation of Division of Hamirpur Division and Bilaspur and preparation of separate seniority list. Thus, arguments of Ld. Dy. D.A. are not supported with corresponding pleadings and evidence on record. In **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union,** reported in **2015 LLR 337** Hon'ble Apex Court has in unambiguous terms has held that **non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act.** In the case in hand, omission of respondent in preparation seniority list of Bilaspur Division and failing to reflect his name in said seniority list by respondent clearly violates Section 25-G of Industrial Disputes Act.

13. As has come in the evidence of the parties that in the seniority list as on 31.12.2014 relating to Bilaspur Division, the name of petitioner has not been mentioned in the list Ex. P1 prepared by respondent himself clearly vitiate of provisions of Section 25-G of the Industrial Disputes Act in view of law laid down by the Hon'ble Apex Court (2015 supra). Otherwise also, from testimony of petitioner coupled with seniority list, an irresistible inference which may be drawn is that several junior persons whose names were mentioned in para no.5 of affidavit of petitioner were still working with the respondent whereas the services of petitioner were illegally terminated without serving any notice by the respondent. Thus, principle of 'Last come First go' envisaged under Section 25-G was not followed. It is settled law for applicability of Section 25 G of Industrial Disputes Act that it is not necessary that claimant/petitioner ought to have completed 240 days in a year as has been held by the Hon'ble Apex Court in **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. Similarly, while recruiting or engaging new hands even petitioner was not afforded an opportunity to work rather respondent in his reply admitted that he failed to enter the name of the petitioner as stated above. Be it noticed that respondent has made inconsistent plea of work of the Wild Life Bilaspur Division was stated to be seasonal in nature and the other plea that petitioner himself abandoned the job. The case of petitioner remain that the petitioner abandoned the job of his own who used to attend the work intermittently of his own whims and convenience and respondent has not issued any notice calling upon the petitioner to join of his duties moreso when petitioner had not completed 240 days. By not issuing any notice or charge-sheet inference of abandonment cannot be drawn which was to be proved like any other fact by leading cogent evidence. Having not issued any legal notice to the petitioner or omitted to raise charge-sheet belies the stand of respondent on abandonment of the job by respondent and for said reason plea of petitioner has to be accepted that services of petitioner have been illegally terminated by verbal order in the year January, 2009. In view of the foregoing discussions, it is held that petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act however petitioner has duly proved violation of Section 25- G and Section 25-H of the Act by the respondent. Issue no.1 is thus answered in affirmative holding that termination of services of petitioner during January, 2009 by Divisional Forest Officer, Hamirpur is illegal and unjustified.

14. With regard to source of income of petitioner ever since termination of his services, it is relevant to mention here that petitioner although in claim petition as well as affidavit has mentioned that he remained unemployed who had no source of income whatsoever but in the witness box in his cross-examination, he has admitted that he nowadays worked privately who had sufficient and reasonable income from private work. Thus, it cannot be stated that petitioner was not gainfully employed. However, keeping in view the manner petitioner was verbally disengaged from his job he would be liable to reinstatement by the respondent with his seniority and continuity in service **except back wages**. Both these issues are answered accordingly.

ISSUE NO. 3

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

16. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room. Announced in the open Court today this 21st day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 67/2015

Date of Institution : 23.02.2015

Date of decision : 21.03.2016

Shri Ram Pal s/o Shri Shankar Dass, r/o Village and P.O. Nakrana, Tehsil Shree Naina Devi Jee, District Bilaspur, H.P. . .*Petitioner*.

Versus

The Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P.

. .*Respondent*.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether the termination of services of Shri Ram Pal S/O Shri Shankar Dass, R/O Village and P.O. Nakrana, Tehsil Shree Naina Devi Ji, District Bilaspur, H.P. by the Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P. w.e.f. 01.01.2009 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and relief the above workman is entitled to?"

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that claimant/petitioner abovenamed had been engaged as daily wager in 1998 and he worked for three months and in the year 2007 petitioner had worked for two months i.e. June and July rather in the year 2008 he had worked for whole month with the Range Forest Wild Life Shri Naina Deviji, District Bilaspur, H.P. where he continued to worked till January, 2009. The grievance of petitioner remains that respondent had without any rhyme and reason and serving any notice orally terminated his services in January, 2009. It is specifically alleged that ignoring the rights of claimant/petitioner respondent had not prepared seniority list of daily waged workers as on 31st July, 2010 did not reflect petitioner's name in the seniority list according to which several workers namely S/Sh. Ashok Kumar, Madan Lal, Rajesh Kumar, Sudesh Kumar, Balwant Singh, Anil Kumar, Satpal Singh, Pratap Chand, Ravinder Kumar, Bantu Singh, Sant Ram, Pankaj Walia, Vijay Kumar, Rajesh Kumar, Naresh Kumar, Aman Kumar, Praveen Kumar and Surinder Kumar were still employed and were junior to petitioner. Thus, alleging to have not followed the principle of 'last come first go' envisaged under Section 25-H and 25-G of the Industrial Disputes Act, 1947 and the services of petitioner had been disengaged. At the same time, provisions of Section 25-F too had not been followed which was also an unfair labour practice as petitioner had rendered service of 240 days immediately prior to his termination. The petitioner further alleges that he was unemployed who had no source of income of livelihood. Accordingly, petitioner prays for reinstatement with full back wages and all consequential benefits admissible to him.

4. The respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits admitted that petitioner had been engaged initially in March, 2008 in Shri Naina Deviji Wild Life Range as casual labourer where seasonal work was being carried out through volunteers and local villagers and that petitioner was never engaged as daily wager so question of retrenching him from work did not arise. It is also contended that petitioner had been attending the work intermittently as was clear from mandays chart on record. It is specifically alleged that petitioner was not attending the work regularly rather he visited site of work as per his own convenience and that no fictional breaks had ever been given by the

respondent/department. It also remains the case of respondent that the work which was being carried out in Shri Naina Deviji Wild Life was seasonal work and therefore the question of working as daily wager did not arise. It is admitted that name of the petitioner did not figure in the seniority list due to the reason that petitioner was employed as casual labourer and had not worked continuously for 240 days in a year. It has been emphatically denied that petitioner had worked for 240 days in any calendar year immediately preceding his termination and for said reason respondent cannot be stated to have violated Section 25-F of Industrial Disputes Act. Since the petitioner himself has allegedly abandoned the work who had not completed 240 days, there was not requirement of showing or reflecting his name in the seniority list or serving any notice under Section 25-F of the Industrial Disputes Act. The petitioner is stated to have been gainfully employed as he himself engaged in agricultural work which was cultivable land wherefrom petitioner earned his livelihood. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of mandays chart of Sh. Sundar Ram, Ex. PW1/C copy of mandays chart of Sh. Garja Ram, Ex. PW1/D copy of seniority list, Ex. PW1/E copy of CWP No. 2261/2014 decided on 18.10.2004 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri H.K. Sarwata, Divisional Forest Officer, Forest Division Bilaspur as RW1 tendered/proved her affidavit Ex. RW1/A, Mandays chart Ex. RW1/B, Seniority list Ex. RW1/C, copy of letter dated 11.12.1997 Ex. RW1/D, copy of letter dated 9.5.2000 Ex. RW1/E and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.9.2015 for determination which are as under:

1. Whether termination of the services of the petitioner by the respondent w.e.f. 01.01.2009 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable in the present form? . .*OPR*.

4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed.

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that mandays chart Ex. RW1/B relied upon by the respondent reflects total number of days for petitioner worked i.e. from March, 2008 to December, 2008. As per this document on record, petitioner is shown to have worked for 100 days in the month of w.e.f. March, 2008 to December, 2008 and thereafter did not work with the respondent. A bare glance on this document would reveal that petitioner had not worked 240 days w.e.f. March, 2008 to December, 2008 in this year it can be seen from mandays chart aforestated that petitioner had not worked for 240 days as petitioner is shown to have worked for 100 days only. As such, when petitioner had totally worked for 100 days, plea of having worked for 240 days gets falsified and thus provisions of Section 25-F of Industrial Disputes Act are not attracted.

12. In so far as violation of Section 25-G and Section 25-H of the Industrial Disputes Act are concerned, it would be relevant to mention here that Ex. PW1/C and Ex. RW1/C are the same document i.e. seniority list of the daily wagers from 1999 onwards to 31.7.2010 in respect of Wild Life Division Hamirpur which showed name of petitioner figuring at serial no.17. In the year 2008, petitioner is shown to have worked for 100 days. After the name of claimant/petitioner this seniority list referred to above further stipulates names of workers upto serial no.38 who are stated to be junior to petitioner and retained in service while the services of the petitioner had been retrenched. The fact that about 20 workers whose names are enumerated in para no.5 of the affidavit Ex. PW1/A of petitioner were junior and still employed has not been repudiated by Ld. Dy. D.A. while cross-examining the petitioner assumes significance. Not only this, as per mandays chart Ex. PW1/B Sunder Ram is shown to have been engaged in 2009 who continued to work in 2013. Similarly, Ex. PW1/C in the mandays chart of Garja Ram who is shown to have engaged by issuing muster roll in 2009 who too is shown to have worked till upto 15.6.2013. Abovestated documents clearly show that both these daily waged workmen were appointed after the year of termination in January, 2009. On the other hand, respondent RW1 Shri H.K. Sarwata in his cross-examination admitted that the workers mentioned in Seniority list Ex. P1 shows that the workers figuring at serial nos. 8,9,19, 20 and 21 were junior to the petitioner. He further admitted that no show cause notice was issued to the petitioner when he had left the job. Although, admitted that the petitioner was engaged in the year 2008. Minor scrutiny of testimony of RW1 would further reveal that petitioner had been initially engaged in Hamirpur Forest Division whereas petitioner was factually initially engaged by Forest Range Officer, Shri Naina Deviji but this aspect ceases to have significance on the merits of case in as much as respondent in its reply nowhere alleged about bifurcation of Division of Hamirpur Division and Bilaspur and preparation of separate seniority list. Thus, arguments of Ld. Dy. D.A. are not supported with corresponding pleadings and evidence on record. In **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union,** reported in **2015 LLR 337** Hon'ble Apex Court has in unambiguous terms has held that **non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act.** In the case in hand, omission of respondent in preparation seniority list of Bilaspur Division and failing to reflect his name in said seniority list by respondent clearly violates Section 25-G of Industrial Disputes Act.

13. As has come in the evidence of the parties that in the seniority list as on 31.12.2014 relating to Bilaspur Division, the name of petitioner has not been mentioned in the list Ex. P1 prepared by respondent himself clearly vitiate of provisions of Section 25-G of the Industrial Disputes Act in view of law laid down by the Hon'ble Apex Court (2015 supra). Otherwise also,

from testimony of petitioner coupled with seniority list, an irresistible inference which may be drawn is that several junior persons whose names were mentioned in para no.5 of affidavit of petitioner were still working with the respondent whereas the services of petitioner were illegally terminated without serving any notice by the respondent. Thus, principle of 'Last come First go' envisaged under Section 25-G was not followed. It is settled law for applicability of Section 25 G of Industrial Disputes Act that it is not necessary that claimant/petitioner ought to have completed 240 days in a year as has been held by the Hon'ble Apex Court in **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. Similarly, while recruiting or engaging new hands even petitioner was not afforded an opportunity to work rather respondent in his reply admitted that he failed to enter the name of the petitioner as stated above. Be it noticed that respondent has made inconsistent plea of work of the Wild Life Bilaspur Division was stated to be seasonal in nature and the other plea that petitioner himself abandoned the job. The case of petitioner remain that the petitioner abandoned the job of his own who used to attend the work intermittently of his own whims and convenience and respondent has not issued any notice calling upon the petitioner to join of his duties moreso when petitioner had not completed 240 days. By not issuing any notice or charge-sheet inference of abandonment cannot be drawn which was to be proved like any other fact by leading cogent evidence. Having not issued any legal notice to the petitioner or omitted to raise charge-sheet belies the stand of respondent on abandonment of the job by respondent and for said reason plea of petitioner has to be accepted that services of petitioner have been illegally terminated by verbal order in the year January, 2009. In view of the foregoing discussions, it is held that petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act however petitioner has duly proved violation of Section 25- G and Section 25-H of the Act by the respondent. Issue no.1 is thus answered in affirmative holding that termination of services of petitioner during January, 2009 by Divisional Forest Officer, Hamirpur is illegal and unjustified.

14. With regard to source of income of petitioner ever since termination of his services, it is relevant to mention here that petitioner although in claim petition as well as affidavit has mentioned that he remained unemployed who had no source of income whatsoever but in the witness box in his cross-examination, he has admitted that he nowadays worked privately who had sufficient and reasonable income from private work. Thus, it cannot be stated that petitioner was not gainfully employed. However, keeping in view the manner petitioner was verbally disengaged from his job he would be liable to reinstatement by the respondent with his seniority and continuity in service **except back wages**. Both these issues are answered accordingly.

ISSUE NO.3

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

16. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 68/2015

Date of Institution : 23.02.2015

Date of decision : 21.03.2016

Shri Roop Lal s/o Shri Shrawan Kumar, r/o Village and P.O. Nakrana, Tehsil Shree Naina Devi Jee, District Bilaspur, H.P. . .*Petitioner*.

Versus

The Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P.

. .*Respondent*.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of Shri Roop Lal S/O Shri Shrawan Kumar, R/O Village and P.O. Nakrana, Tehsil Shree Naina Devi Ji, District Bilaspur, H.P. by the Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P. w.e.f.

01.01.2009 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and relief the above workman is entitled to?"

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that claimant/petitioner abovenamed had been engaged as daily wager in 2008 by Range Forest Wild Life Shri Naina Deviji, District Bilaspur, H.P. where he continued to worked till January, 2009. The grievance of petitioner remains that respondent had without any rhyme and reason and serving any notice orally terminated his services in January, 2009. It is alleged that in May, 2011 respondent had stopped muster roll however he continued to engage junior workers which was unfair labour practice. It is specifically alleged that ignoring the rights of claimant/petitioner respondent had not prepared seniority list of daily waged workers as on 31st July, 2010 and did not reflect petitioner's name in the seniority list according to which several workers namely S/Sh. Ashok Kumar, Madan Lal, Rajesh Kumar, Sudesh Kumar, Balwant Singh, Anil Kumar, Satpal Singh, Pratap Chand, Ravinder Kumar, Bantu Singh, Sant Ram, Pankaj Walia, Vijay Kumar, Rajesh Kumar, Naresh Kumar, Aman Kumar, Praveen Kumar and Surinder Kumar were still employed and were junior to petitioner. Thus, alleging to have not followed the principle of 'last come first go' envisaged under Section 25-H and 25-G of the Industrial Disputes Act, 1947 services of petitioner had been disengaged. At the same time, provisions of Section 25-F too had not been followed which was also an unfair labour practice as petitioner had rendered service of 240 days immediately prior to his termination. The petitioner further alleges that he was unemployed who had no source of income of livelihood. Accordingly, petitioner prays for reinstatement with full back wages and all consequential benefits admissible to him.

4. The respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits admitted that petitioner had been engaged initially in June, 2008 in Shri Naina Deviji Wild Life Range as casual labourer where seasonal work was being carried out through volunteers and local villagers and that petitioner was never engaged as daily wager so question of retrenching him from work did not arise. It is also contended that petitioner had been attending the work intermittently as was clear from mandays chart on record. It is specifically alleged that petitioner was not attending the work regularly rather he visited site of work as per his own convenience and that no fictional breaks had ever been given by the respondent/department. It also remains the case of respondent that the work which was being carried out in Shri Naina Deviji Wild Life was seasonal work and therefore the question of working as daily wager did not arise. It is admitted that name of the petitioner did not figure in the seniority list due to the reason that petitioner was employed as casual labourer and had not worked continuously for 240 days in a year. It has been emphatically denied that petitioner had worked for 240 days in any calendar year immediately preceding his termination and for said reason respondent cannot be stated to have violated Section 25-F of Industrial Disputes Act. Since the petitioner himself has allegedly abandoned the work who had not completed 240 days, there was not requirement of showing or reflecting his name in the seniority list or serving any notice under Section 25-F of the Industrial Disputes Act. The petitioner is stated to have been gainfully employed as he himself engaged in agricultural work which was cultivable land wherefrom petitioner earned his livelihood. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of mandays chart of Sh. Sundar Ram, Ex. PW1/C copy of mandays chart of Sh. Garja Ram, Ex. PW1/D copy of seniority list, Ex. PW1/E copy of CWP No. 2261/2014 decided on 18.10.2004 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri H.K. Sarwata, Divisional Forest Officer, Forest Division Bilaspur as RW1 tendered/proved her affidavit Ex. RW1/A, Mandays chart Ex. RW1/B, Seniority list Ex. RW1/C, copy of letter dated 11.12.1997 Ex. RW1/D, copy of letter dated 9.5.2000 Ex. RW1/E and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 16.9.2015 for determination which are as under:

1. Whether termination of the services of the petitioner by the respondent w.e.f. 01.01.2009 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable in the present form? . .*OPR*.

4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed. Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that mandays chart Ex. RW1/B relied upon by the respondent reflects total number of days for petitioner worked in December, 2008. As per this document on record, petitioner is shown to have worked for 02 days in the month of December, 2008 and thereafter did not work with the respondent. A bare glance on this document would reveal that petitioner had not worked 240 days in December, 2008 in this year it can be seen from mandays chart aforestated that petitioner had not worked for 240 days as petitioner is shown to have worked for 02 days only. As such, when petitioner had totally worked for 02 days, plea of having worked for 240 days gets falsified and thus provisions of Section 25-F of Industrial Disputes Act are not attracted.

12. In so far as violation of Section 25-G and Section 25-H of the Industrial Disputes Act are concerned, it would be relevant to mention here that Ex. PW1/C and Ex. RW1/C are the same document i.e. seniority list of the daily wagers from 1999 onwards to 31.7.2010 in respect of Wild Life Division Hamirpur which showed name of petitioner figuring at serial no.20. In the year 2008, petitioner is shown to have worked for 02 days. After the name of claimant/petitioner this seniority list referred to above further stipulates names of workers upto serial no.38 who are stated to be junior to petitioner and retained in service while the services of the petitioner had been retrenched. The fact that about 16 workers whose names are enumerated in para no.5 of the affidavit Ex. PW1/A of petitioner were junior and still employed has not been repudiated by Ld. Dy. D.A. while cross-examining the petitioner assumes significance. Not only this, as per mandays chart Ex. PW1/B Sunder Ram is shown to have been engaged in 2009 who continued to work in 2013. Similarly, Ex. PW1/C in the mandays chart of Garja Ram who is shown to have engaged by issuing muster roll in 2009 who too is shown to have worked till upto 15.6.2013. Abovestated documents clearly show that both these daily waged workmen were appointed after the year of termination in January, 2009. On the other hand, respondent RW1 Shri H.K. Sarwata in his cross-examination admitted that the workers mentioned in Seniority list Ex. P1 shows that the workers figuring at serial nos. 8,9,19, 20 and 21 were junior to the petitioner. He further admitted that no show cause notice was issued to the petitioner when he had left the job. Although, admitted that the petitioner was engaged in the year 2008. Minor scrutiny of testimony of RW1 would further reveal that petitioner had been initially engaged in Hamirpur Forest Division whereas petitioner was factually initially engaged by Forest Range Officer, Shri Naina Deviji but this aspect ceases to have significance on the merits of case in as much as respondent in its reply nowhere alleged about bifurcation of Division of Hamirpur Division and Bilaspur and preparation of separate seniority list. Thus, arguments of Ld. Dy. D.A. are not supported with corresponding pleadings and evidence on record. In **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union,** reported in **2015 LLR 337** Hon'ble Apex Court has in unambiguous terms has held that **non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act.** In the case in hand, omission of respondent in preparation seniority list of Bilaspur Division and failing to reflect his name in said seniority list by respondent clearly violates Section 25-G of Industrial Disputes Act.

13. As has come in the evidence of the parties that in the seniority list as on 31.12.2014 relating to Bilaspur Division, the name of petitioner has not been mentioned in the list Ex. P1 prepared by respondent himself clearly vitiate of provisions of Section 25-G of the Industrial Disputes Act in view of law laid down by the Hon'ble Apex Court (2015 supra). Otherwise also, from testimony of petitioner coupled with seniority list, an irresistible inference which may be drawn is that several junior persons whose names were mentioned in para no.5 of affidavit of petitioner were still working with the respondent whereas the services of petitioner were illegally terminated without serving any notice by the respondent. Thus, principle of 'Last come First go' envisaged under Section 25-G was not followed. It is settled law for applicability of Section 25-G of Industrial Disputes Act that it is not necessary that claimant/petitioner ought to have completed 240 days in a year as has been held by the Hon'ble Apex Court in **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. Similarly, while recruiting or engaging new hands even petitioner was not afforded an opportunity to work rather respondent in his reply admitted that he failed to enter the name of the petitioner as stated above. Be it noticed that respondent has made inconsistent plea of work of the Wild Life Bilaspur Division was stated to be seasonal in nature and the other plea that petitioner himself abandoned the job. The case of petitioner remain that the petitioner abandoned the job of his own who used to attend the work intermittently of his own whims and convenience and respondent has not issued any notice calling upon the petitioner to join of his duties moreso when petitioner had not completed 240 days. By not issuing any notice or charge-sheet inference of abandonment cannot be drawn which was to be

proved like any other fact by leading cogent evidence. Having not issued any legal notice to the petitioner or omitted to raise charge-sheet belies the stand of respondent on abandonment of the job by respondent and for said reason plea of petitioner has to be accepted that services of petitioner have been illegally terminated by verbal order in the year January, 2009. In view of the foregoing discussions, it is held that petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act however petitioner has duly proved violation of Section 25-G and Section 25-H of the Act by the respondent. Issue no.1 is thus answered in affirmative holding that termination of services of petitioner during January, 2009 by Divisional Forest Officer, Hamirpur is illegal and unjustified.

14. With regard to source of income of petitioner ever since termination of his services, it is relevant to mention here that petitioner although in claim petition as well as affidavit has mentioned that he remained unemployed who had no source of income whatsoever but in the witness box in his cross- examination, he has admitted that he nowadays worked privately who had sufficient and reasonable income from private work. Thus, it cannot be stated that petitioner was not gainfully employed. However, keeping in view the manner petitioner was verbally disengaged from his job he would be liable to reinstatement by the respondent with his seniority and continuity in service **except back wages**. Both these issues are answered accordingly.

ISSUE NO.3

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

16. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of March, 2016.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT CUMINDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 110/ 2014

Smt. Kanta Devi w/o Sh. Lekh Raj, r/o VPO-Baral, Tehsil Nurpur, Distt. Kangra, H.P.through Small Scale Industries Workers Union Boud, P.O. Jassur, Tehsil Nurpur, Distt. H.P.
. .*Petitioner*.

Versus

1. The Managing Director, H.P. General Industries Corporation Ltd. Himrus Building, Cart Road, Shimla-I.

2. The Director, H.P. General Industries Corporation Ltd. Dharamshala, Distt. Kangra, H.P. . .*Respondents*.

22-03-2016 Present: None for the petitioner.

Sh. Vipul Bhardwaj, adv. csl. for the respondents.

Sh. Lokesh Kumar Mahajan, Manager, Nurpur Silk Mills of respondent company present in person.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

22-03-2016 Present: None for the petitioner.

Sh. Vipul Bhardwaj, adv. csl. for the respondents.
Sh. Lokesh Kumar Mahajan, Manager, Nurpur Silk Mills of respondent company present in person.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.15 P.M. None appearance of petitioner or her ld.csl. today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
22-03-2016

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT CUMINDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 113/ 2014

Smt. Devi Rani w/o Shri Subhash Chand, r/o Ward No.5, V.P.O. & Tehsil Nurpur, Distt. Kangra, H.P. . .*Petitioner*.

Versus

1. The Managing Director, H.P. General Industries Corporation Ltd. Himrus Building, Cart Road, Shimla-I.
2. The Director, H.P. General Industries Corporation Ltd. Dharamshala, Distt. Kangra, H.P. . .*Respondents*.

22-03-2016 Present: None for the petitioner.

Sh. Vipul Bhardwaj, adv. csl. for the respondents.

Sh. Lokesh Kumar Mahajan, Manager, Nurpur Silk Mills of respondent company present in person.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

22-03-2016 Present: None for the petitioner.

Sh. Vipul Bhardwaj, adv. csl. for the respondents.

Sh. Lokesh Kumar Mahajan, Manager, Nurpur Silk Mills of respondent company present in person.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or her ld.csl. today is indicative of the fact that she is not interested to pursue present reference and accordingly reference is disposed of for non prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
22-03-2016

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 235/2014

Date of Institution : 18.06.2014

Date of decision : 23.03.2016

Smt. Renu Vaidya w/o Shri Krishan Raj r/o Village Sun Rise Building, Strawberry Hills, Near Regional Ayurvedic Hospital Shimla-2, H.P. . .*Petitioner*.

Versus

The Assistant Town Planner, Sub Divisional Town Planning Office, Chamba, District Chamba, H.P. . .*Respondent*.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Sh. N.L. Kaundal, AR
: Sh. Jitender Sharma, Adv.
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether removal from the services of Smt. Renu Vaidya W/O Sh. Krishan Raj, R/O Sun Rise Building, Strawberry Hills, Near Regional Ayurvedic Hospital Shimla-2 by the Sub Divisional Town Planning Office, Chamba, Distt. Chamba during July/August, 1999 is legal and justify? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as stipulated in the claim petition reveal that petitioner above named had been engaged by the respondent as Tracer Draughtsman on daily wage basis w.e.f. 01.01.1998 without any appointment order and settling any terms and conditions with prior permission of the HOD against the vacant post where the petitioner continued to work upto July/August, 1999 when her services were terminated illegally without issuance of any notice or payment of wages in lieu of notice and thus her retrenchment in July/August, 1999 from service was unlawful in violation of Section 25-F (a) and (b) of Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity) besides no communication was sent to the appropriate government under Section 25-F (c) of the Act. The grievance of the petitioner remains that respondent while terminating the services of petitioner had not followed the principle of 'Last come First go' envisaged under Section 25-G of the Act. It is contended that no seniority list of daily wager/regular tracer/draughtsman had been supplied by the respondent/department to the petitioner and had not placed the same on the notice board at the time of her retrenchment and was even not furnished before the Conciliation Officer. It is claimed that after her illegal termination petitioner has remained unemployed and thus was not

gainfully employed anywhere. Accordingly, petitioner has prayed for setting aside illegal order passed by the respondent with further prayer for reinstatement her services with seniority and continuity with all consequential benefits. It is also prayed that since the petitioner had rendered continuous service w.e.f. 1.1.2006 for eight years she was liable to be regularized with seniority besides litigation costs of Rs.10,000/-.

4. The respondent contested petition, filed separate reply inter-alia taken preliminary objections qua delay and laches and maintainability. On merits admitted that petitioner was engaged by the respondent/department on 20.1.1998 as daily waged Tracer Darftsman (TDM) and that she had worked intermittently with the respondent till 20.7.1998 however denied that petitioner was engaged on 1.1.1998 and worked upto July/August, 1999. It is contended that petitioner had never completed 240 days as required under Section 25-B of the Act. It is admitted that petitioner in all worked for 140 days upto 20.7.1998 and that for said reason, question of terminating the services of petitioner in July/August, 1999 did not arise. It has been emphatically denied that persons junior to the petitioner had been retained in service by the respondent/department and had not engaged/reengaged any junior to petitioner. As per letter dated 6.5.1998 of Director Town & Country Planning, H.P. regarding redistribution of the psots of various categories no post of TDM existed with respondent/department. It is also denied that petitioner ever approached the respondent after 20th July, 1998 and raised demand notice in 2013. As such, petitioner is not entitled to any relief.

5. The petitioner filed rejoinder to reply filed by respondent, reiterated his stand as maintained in the claim petition.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 6.5.1998, Ex. PW1/C copy of letter dated 4.9.1986, Mark-A and Mark-B are the copies of representations dated 15.8.2008 and 26.1.2001 respectively, copy of demand notice dated 02.9.2013 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Harjinder Singh, Assistant Town Planner, Sub Divisional Town & Country Planning Office, Chamba, H.P. tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B mandays chart of petitioner, Ex. RW1/C copy of letter dated 8.7.1998 and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 12.8.2015 for determination which are as under:

1. Whether termination of services of petitioner by the respondent during July/August, 1999 is/was improper and unjustified as alleged? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR*.

4. Whether the claim petition is bad on account of delay and laches on part of petitioner as alleged? If so, its effect? . .*OPR*.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed off simultaneously without repetition of evidence.

11. Ex. RW1/B is the mandays chart showing claimant/petitioner to have worked for 140 days in all in the year 1998 with the respondent/department. In her pleadings, petitioner has asserted to have worked with the respondent for more than 240 days and made futile attempt to claim benefit of Section 25-B of the Act but the facts which have got surfaced in evidence remain that petitioner has merely worked for 140 days and not 240 days which were required to be established by the claimant/petitioner. In the witness box petitioner has asserted to have remained employed with the respondent for more than 240 days but in view of oral and documentary evidence on record as stated above it would be unsafe to hold that petitioner had factually completed 240 days and was entitled for protection envisaged under Section 25-F of the Act. As such, claimant/petitioner has failed to establish violation of provisions of Section 25-F of the Act on the part of respondent and for said reason, there was no requirement of issuance of legal notice or payment of wages of one month in lieu of notice period.

12. Smt. Renu Vaidya PW1, the petitioner has stepped into witness box deposed on oath as maintained in claim petition tendered letters dated Ex. PW1/B 6.5.1998 and Ex. PW1/C 4.9.1986 respectively. She has also tendered photocopies of her representations to the department which are Mark-A and Mark-B on which no action was stated to be taken by the respondent. The grievance of petitioner thus remains that although she had been representing for her reengagement in service but respondent department did not pay any heed to her request/representations for reemployment. Representation Mark 'A' pertains to 2008 and Mark 'B' pertains to 2001 receipt of which has been denied by respondent on this ground that those were not received by the respondent at any point of time. Ld. counsel for the petitioner has contended with vehemence that after termination of the services of claimant/petitioner demand notice dated 02.9.2013 Ex. PW1/D was issued by petitioner to respondent which had engaged several other persons junior to petitioner and did not offer reemployment opportunity thus there was violation of Sections 25-G and 25-H of the Act.

13. Ld. counsel/AR for petitioner has contended with vehemence that in order to attract provisions of Section 25-G and 25-H, it was not required to be proved that claimant/petitioner had worked with the respondent for 240 days. In support of his contention, reliance has been placed upon the judgment of Hon'ble Apex Court reported in **1996 (5) SCC 419** titled as **Central Bank of India vs. S. Satyam** in which Hon'ble Apex Court has held that even if the workman has worked less than 240 days and not discontinued from his service shall be entitled to protection envisaged under Section 25-G of the Act. In the case in hand before this court, although petitioner is shown to have worked less than 240 days yet by engaging new draftsman who were junior to her and not offering her reemployment opportunity clearly violates Sections 25-G as well as 25-H of the Act.

Reliance is placed on the seniority list dated 16.9.2015 Ex. RA which revealed that several draftsman had been engaged in particular in the year 2008 Shri Lekh Raj at serial no.1, Shri Bikram Singh in 1999, S/Sh. Susheel Kumar, Shammi and Dharmender at serial nos. 23 to 25 in the year 2014 and 2015. Since there is no iota of evidence on record establishing that petitioner was offered opportunity of reemployment this court is left with no option but hold that respondent omitted to adhere to mandate of Sections 25-H of the Act. Similar view was reiterated by Hon'ble Apex Court in another judgment titled as **State of Haryana vs. Dilbagh Singh** reported in **2007 LLR 72.** Applying ratio ratio of both these judgments referred to above, the respondent can be stated to have violated the provisions of Sections 25-G and 25-H of the Act while removing petitioner from service.

14. Ld. counsel/AR for the petitioner has relied on judgment of our own Hon'ble High Court of Himachal Pradesh reported in **2015 (146) FLR 1056** titled as **State of Himachal Pradesh & Ors. and Bego Devi** and relevant para is reproduced as under:

> "Industrial Disputes Act, 1947-Sections 25-G and 25-H. Retrenchment. Workman has not completed 160 days, as required. She has completed only 140 days. However, at time of her retrenchment, juniors were retained. Thus there was violation of section 25-G of Act. Another one junior to workman was re-employed. Opportunity of re-employment not afforded to her. Section 25-H is violated. Labour Court allowed the claim of workman partly. Set aside the retrenchment and ordered reinstatement of workman with seniority and continuity in service. There is no illegality or perversity in the award".

Applying the ratio of abovestated judgment to present case, respondent is held to have violated Section 25-G as well as 25-H of the Industrial Disputes Act.

15. Ld. Dy. D.A. for the State has contended with vehemence that list of draughtsman relied upon by the counsel/AR for the petitioner has contented that seniority list Ex. RA does not relate to District Chamba whereas the petitioner was posted in Chamba and seniority of that area was important but this aspect ceases to be significant as it is nowhere the case of the respondent that some seniority list has been prepared separately in District Chamba. Thus, non preparation of seniority list would be manifestly in violation of Section 25-G of the Act in view of judgment of Hon'ble Apex Court titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union,** reported in **2015 LLR 337** Hon'ble Apex Court has in unambiguous terms has held that **non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act.** In view of these facts stated above petitioner was not afforded an opportunity of reemployment which necessarily violated Section 25-G of Industrial Disputes Act. No further arguments had been advanced on the point of gainful employment of petitioner by ld. counsel for petitioner as such, no findings to that effect are given.

16. Accordingly, retrenchment of petitioner by the respondent/department is held to be illegal and unjustified. Issue in hand is answered accordingly.

ISSUE NO.3

17. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

ISSUE NO.4

18. Ld. Dy. D.A. representing respondent/department has contended with vehemence that claim petition is barred by limitation on account of delay and laches. It has been pointed that termination of petitioner in this case took place on July/August, 2008 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. counsel, ld. AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of conciliation proceeding before authority under Act, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when his services were illegally terminated. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

19. As sequel to my findings on foregoing issues, the retrenchment order of the services of petitioner is set aside and hereby quashed. The reference/claim petition is partly allowed accordingly. The respondent is hereby directed to reengage the petitioner forthwith who shall be entitled to seniority and continuity in service **except back wages** from the date of issuance of her demand notice dated 02.9.2013. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.(Camp at Mandi)

Ref: No. 227/ 2014

Sh. Rakesh Singh s/o Sh. Magan Singh, r/o Village Behna, Tehsil Sadar, District Mandi, H.P. . .*Petitioner*.

Versus

The Employer/Managing Director, M/S Shivansh Motors Private Limited Gutkar, Tehsil & District Mandi, H.P. . .*Respondent*.

29-03-2016 Present: None for the petitioner.

Sh. Udhey Nand, adv. vice of Sh. D.S. Katoch, adv. csl. for the respondent.

As per report of process server agency notice to the petitioner has been served. Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.35 A.M. Be awaited and put up after lunch hours.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

29-03-2016 Present: None for the petitioner.

Sh. Udhey Nand, adv. vice of Sh. D.S. Katoch, adv. csl. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.30 P.M. None appearance of petitioner or his ld.csl. today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication. The file, after completion be consigned to the records.

Announced:
29-03-2016

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT MANDI)

Ref No. : 31/2014

Date of Institution : 23.01.2014

Date of decision : 29.03.2016

Shri Kanshi Ram s/o Shri Balkia, r/o Village Neri, P.O. Dogri, Tehsil Sunder Nagar, Distt. Mandi, H.P. . .*Petitioner*.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . .*Respondent*.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Kanshi Ram, S/O Shri Balkia, R/O Village Neri, P.O. Dogri, Tehsil Sunder Nagar, District Mandi, H.P. during the year 2008 to 2012 and finally during August, 2012 By the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the petitioner had worked as beldar on daily wage basis since 1.7.1999 under the respondent/department in Bandli/Behali Beat under Forest Range Kangoo and petitioner worked as such upto August, 2012 and was invariably given fictional breaks in service. It is alleged that the respondent/department had committed various unfair labour practices in the shape of break in service intermittently although the work had been taken from the petitioner regularly and without notice and reasons, the services of petitioner had been terminated w.e.f. 1.9.2012 by an oral order. It is stated that petitioner had not left the job of his own. It is alleged that respondent/department had appointed 180 junior to the petitioner and petitioner was not offered for reemployment which was also unfair labour practice and thus respondent had violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947. It is prayed that the respondent be directed not to give fictional breaks in the services to petitioner and fictional breaks already given in the service records of petitioner be condoned and petitioner be regularized along-with consequential benefits.

4. The respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition become infructuous and bad on account of delay and laches. On merits admitted that petitioner was initially engaged in forest department in July, 1999 to carryout the seasonal forestry works and as such he worked with the respondent/department intermittently upto March, 2014. It is alleged that petitioner had not been given any fictional breaks in his service but petitioner had left the job of his own sweet will however as and when petitioner had approached the respondent, his services had been utilized by the respondent/department. It is claimed that petitioner was still continuing to work intermittently with the department thereafter the question of fictional breaks given to the petitioner did not arise. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed240 days of work so far in any of calendar year. It is emphatically denied that any fictional breaks were given to petitioner with the object that he did not get the benefit of the provisions of the Industrial Disputes Act. It is stated that the petitioner had not reported for duty as per his own sweet will. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Dr. L.C. Bandana, Divisional Forest Officer, Suket Forest Division, Sundar Nagar as RW1 tendered/proved her affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed 10.11.2015 but were recasted on 29.3.2016 for determination which are as under:

1. Whether time to time termination of services of petitioner by respondent is illegal and unjustified as alleged. If so, its effect? . .*OPP*.

2. Whether the services of petitioner were finally terminated during August, 2012 by the respondent is illegal and unjustified as alleged? . .*OPP*.

3. Whether the claim petition is not maintainable in the present form? . .*OPR*.

4. Whether the petition is bad on account of delay and laches as alleged. If so, its effect? . .*OPR*.

5. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Redundant.

Issue No.3 : No

Issue No.4 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner in the opening line of cross examination on oath has admitted that he was working with the respondent on the date when his statement was recorded on oath on 9.12.2015 which falsifies the plea of final termination of petitioner moreso when petitioner has admitted to be still working with the respondent. As per mandays chart Ex. RW1/A on record, petitioner has not worked for more than 240 days from 1.7.1999 to August, 2012. Thus, provisions of Section 25-F of the Industrial Disputes Act are held to have not been flouted by respondent while terminating service of petitioner. For the said reason, there was no necessity of notice or wages of one month in lieu of notice period.

12. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly with the respondent/department besides petitioner was still working with the respondent. He admitted that he had agricultural land.. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks in years 2008 till 2012, petitioner could not complete 240 days.

13. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of July, 1999 and was still working when the claim petition was filed. The contents of this document revealed mandays chart showing petitioner to have worked for 165 days in the year 1999, 144 days in 2000, 215 days in 2001, 186 days in 2002, 65 days in 2003, 8 days in 2004, 155 days in 2008, 192 days in 2009, 137 days in 2010, 166 days in 2011, 31 days in 2012 and 230 days in 2013. Ld. AR for the petitioner maintained that the respondent had not produced any seniority list. This goes to show that respondent despite being responsible to maintain seniority list of employees/beldars working under it had failed to tender such records before the court establishing that as to who were the workers junior to the petitioner or the manner in which provisions of Sections 25-G and 25-H of the Industrial Disputes Act were complied with. Ld. counsel for petitioner has relied upon the judgment of Hon'ble Supreme Court reported in **2015 LLR 337** titled as **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union,** in which Hon'ble Apex Court has held that **non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act.** Not only this, respondent RW1 who is contesting on behalf of the respondent/department in cross-examination had shown his ignorance about juniors are to be working with the petitioner who had since been regularized. Similarly, she has also shown his ignorance on the fact that persons junior to the petitioner were working with the department. Thus, evasive replies given by RW1 clearly indicate that respondent was not deposing according to factual record available with the department. Not only this, the cross-examination of RW1 reveals that the seniority list of daily wages was not prepared and there was no plausible explanation from the respondent side which strengthens the case of the petitioner and also in view of Hon'ble Apex Court in **Mackinon**'s case (supra). In view of the same when workers were

juniors to the petitioner as contended by the petitioner himself were retained by respondent/department and that seniority list was admittedly not prepared as deposed by RW1, this court is left with no option but to hold that respondent has deliberately violated the provisions of Section 25-G of the Industrial Disputes Act. Since, there is non availability of seniority list from 2008 to 2012 as aforestated the respondent had also violated the provisions of Section 25-H of the Industrial Disputes Act, moreso when there is no iota of evidence on being petitioner was ever given offer of reemployment.

14. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of July, 1999 which finds supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only although petitioner in crossexamination admitted that forest department was seasonal work. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 165 days in the year 1999, 144 days in 2000, 215 days in 2001, 186 days in 2002, 65 days in 2003, 8 days in 2004, 155 days in 2008, 192 days in 2009, 137 days in 2010, 166 days in 2011, 31 days in 2012 and 230 days in 2013 and therefore when petitioner had served respondent for more than 150/200 days in several calendar years as per mandays chart referred to above it could not be concluded in any manner that petitioner was a seasonal worker instead the plea so raised by respondent manifestly establishes that in order to escape liability, plea of forestry work being seasonal in nature has been set up by respondent. It is nowhere in evidence of respondent that forest department has been declared as seasonal worker as required under the law.

15. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

16. It has also come in the evidence that muster roll had not been issued for whole month in a year. Even in some months muster rolls were not at all issued. No muster roll was issued as petitioner is shown to have not been given any work. It is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua any non attendance and as such the case of petitioner having been given fictional breaks by respondent/department cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 2008 to 2012 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of "continuous service" envisaged under Section 25-F of the Act.

17. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that so many juniors were retained in service leading to

inference that while retrenching petitioner, junior workmen were allowed to be retained in service which showed arbitrary and whimsical manner in which petitioner was disengaged ignoring his seniority. Be it noticed that despite contesting respondent representing forest department has given evasive replies showing his ignorance it after 1999 new beldars or co workers were appointed such statement on part of respondent has to be interpreted in favour of petitioner and against respondent. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time to the petitioner which is illegal and unjustified as has come in the evidence. As the petitioner himself has not discharged initial onus qua remaining unemployed during break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the years 2008 to 2012 as well as seniority **except back wages** for the reasons stated hereinabove. Issue no.1 is thus answered in affirmative whereas issue no.2 is answered in negative.

ISSUE NO.3

18. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.4

19. Ld. Dy. D.A. for State contended that there is inordinate delay on the part of petitioner when filed the claim petition or raised industrial dispute due to which he is not entitled any relief. It may not be erroneous to mention here that petitioner has been continuously working with the respondent and the fictional breaks were given to him of and on by the respondent through its subordinate official for which he raised industrial dispute. The fictional breaks are stated to have been given from 2008 to 2012. Be it noticed that in cross-examination of petitioner by respondent no question on delay has been asked. Even from facts in evidence no inference of delay and laches can be drawn. Accordingly, it is held that claim petition is not bad on account of delay and laches which is also supported by the judgment of **Ajayab Singh vs. Sirhind Co operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82.** Accordingly, issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

20. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from year **2008 to 2012** and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of

the petitioner. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent as stated above with all consequential benefits **except back wages**. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT MANDI)

Ref No. : 72/2014

Date of Institution : 22.02.2014

Date of decision : 29.03.2016

Shri Ramesh Chand s/o Shri Rattan Chand, r/o Village Chalela, P.O. Nakrana, Tehsil Shri Naina Deviji, District Bilaspur, H.P. . .*Petitioner*.

Versus

The Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P. . .*Respondent*.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Ramesh Chand S/o Shri Rattan Chand, R/O Village Chalela, P.O. Nakrana, Tehsil Shri Naina Deviji, District Bilaspur, H.P. during

April, 2011 by the Divisional Forest Officer, Wild Life Division, Hamirpur, District Hamirpur, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and from which date the above worker is entitled to from the above employer?"

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as stipulated in the claim petition reveal that claimant/petitioner abovenamed had been engaged as daily wager in November, 2005 by Range Forest Wild Life Shri Naina Deviji, District Bilaspur, H.P. where he continued to worked till April, 2011. The grievance of petitioner remains that respondent had without any rhyme and reason and serving any notice orally terminated his services in April, 2011. It is alleged that in May, 2011 respondent had stopped muster roll however he continued to engage junior workers which was unfair labour practice. It is specifically alleged that ignoring the rights of claimant/petitioner respondent had not prepared seniority list of daily waged workers as on 31st July, 2007 by not issuing or reflecting his name in the seniority list according to which several workers namely S/Sh. Suresh Kumar, Hari Singh, Hukkam Chand, Smt. Raksha Devi, Rajeev Kumar, Smt. Laxmi Devi, Raksha Devi, Rajesh Kumar, Smt. Usha Devi, Bachnu Ram, Lala Ram, Pawan Kumar, Suresh Lal, Sarvjeet Singh, Sunil Kumar, Ashok Kumar, Madan Lal, Rajesh Kumar,, Sudesh Kumar, Balwant Singh, Anil Kumar, Satpal Singh, Pratap Chand, Ravinder Kumar, Bantu Singh, Sant Ram, Pankaj Walia, Vijay Kumar, Rajesh Kumar, Naresh Kumar, Aman Kumar, Parveen Kumar and Surinder Kumar were still employed and were junior to him. Thus, alleging respondent to have not followed the principle of 'last come first go' envisaged under Section 25-H and 25-G of the Industrial Disputes Act, 1947 services of petitioner were disengaged. At the same time, provisions of Section 25-F too had not been followed which was also an unfair labour practice. The petitioner further alleges that he was unemployed who had no source of income of livelihood. Accordingly, petitioner prays for reinstatement with full back wages and all consequential relief admissible to him.

4. The respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits admitted that petitioner had been engaged initially in November, 2005 in Shri Naina Deviji Wild Life Range as casual labourer where seasonal work was being carried out through volunteer and local villagers and that petitioner was never engaged as daily wager and therefore question of retrenching him from work did not arise. It is also contended that petitioner had been attending work given to him intermittently as was also clear from mandays chart. It is specifically alleges that petitioner was not attending the work regularly rather he visited site of work as per his own convenience and that no fictional breaks had ever been given by the respondent/department. It also remains the case of respondent that the work which was being carried out in Shri Naina Deviji Wild Life Bilaspur was seasonal work and due to said reason question of working of petitioner as daily wager did not arise. It is admitted that name of the petitioner did not figure in the seniority list due to the reason that petitioner was employed as casual labourer and had not worked continuously and uninterruptedly. It has been emphatically denied that petitioner had worked for 240 days in any calendar year immediately preceding his termination and for said reason there was no violation of provisions of Section 25-F of the Industrial Disputes Act. Since the petitioner himself has abandoned the work who had not completed 240 days, there was no requirement of showing his name in the seniority list or serving him any notice or paying wages of one month in lieu of wages under Section 25-F of the Industrial Disputes Act. The petitioner is stated to have been gainfully employed as he himself was engaged in agricultural work who had cultivable land. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of order dated 18.10.2014 passed in CWP No.2261/2014, seniority list Ex. PW1/C and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri H.K. Sarwata, Divisional Forest Officer, Forest Division Bilaspur as RW1 tendered/proved her affidavit Ex. RW1/A, mandays chart Ex. RW1/B, Ex. RW1/C copy of seniority list and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed bymy ld. Predecessor on 16.7.2014 for determination which are as under:

1. Whether the termination of the services of Sh. Ramesh Chand (petitioner) during April, 2011 by the Divisional Forest Officer, Wild Life Division, Hamirpur, Distt. Hamirpur, H.P. is illegal and unjustified, as alleged? . .*OPP*.

2. If issue No.1 is proved in affirmative, whether the petitioner is entitled to back wages, seniority, past service benefits as prayed for? . .*OPP*.

3. Whether the petition is not maintainable in the present form? . .*OPR*.

4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No. 2 : Discussed.

Issue No. 3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that mandays chart Ex. RW1/B relied upon by the respondent reflected total number of days for which petitioner worked from 2001 to 2011. As per this document on record petitioner is shown to have not worked even for single day in the years 2001 to 2004 however he is shown to have worked for 19 days in the month of November, 2005 and thereafter did not work with the respondent. Mandays chart further shows that petitioner had worked for 35 days in 2007, 46 days in 2008, 59 days in 2009, 87 days in 2010 and 15 days in 2011. A bare glance on this document would reveal that petitioner had not worked 240 days w.e.f. 2001 to 2011 in any of the years. It can be seen from aforestated evidence that petitioner had worked for 15 days in the year he was allegedly terminated and even its preceding year he had worked for 87 days. As such, in both the years petitioner had worked for 102 days. As such, plea of having worked for 240 days gets falsified from evidence on record.

12. In so far as violation of principle under Section 25-G and Section 25- H of the Industrial Disputes Act are concerned, it would be relevant to mention here that Ex. PW1/C and Ex. RW1/C are the same document i.e. seniority list of the daily wagers from 1999 onwards to 31.7.2010 in respect of Wild Life Division Hamirpur. This document shows that name of petitioner did not figure in seniority list of Wild Life Division Hamirpur but that does not demolish the case of petitioner in entirety. The fact that about 17 workers whose names enumerated in para no.5 of the affidavit Ex. PW1/A being junior and still employed has not been repudiated by Ld. Dy. D.A. while cross-examining the petitioner. On the other hand, respondent RW1 Shri H.K. Sarwata in his cross-examination denied that according to seniority list 11 persons were junior to petitioner. He has admitted that his signatures exists on seniority list of daily wagers in respect of Bilaspur Forest Division as it existed on 31.12.2014 and it did not reveal the name of petitioner. Although, admitted that the petitioner had been engaged in the year 2005.

13. Minor scrutiny of testimony of RW1 further reveal that petitioner had been initially engaged in Hamirpur Forest Division whereas petitioner was initially engaged by Forest Range Officer, Shri Naina Deviji but this aspect was under the consequence on the merits of case in as much as respondent in its reply nowhere alleged about bifurcation of Division of Hamirpur Division and Bilaspur. In **Mackinon Machenize & Company Ltd.** vs. **Mackinon Employees Union,** reported in **2015 LLR 337** in which Hon'ble Apex Court has unambiguous terms held that **non preparation of seniority list or non displaying of seniority list is breach of Section 25-G of the Industrial Disputes Act.** By not including or reflecting name of petitioner respondent had recoursed to unfair labour practice. As has come in the evidence of the parties that in the seniority list relating to Hamirpur Division, the name of petitioner has not been reflected in the list Ex. P1 prepared by respondent himself. Similarly, there is no such list exist for Bilaspur Division clearly vitiate of provisions of Section 25-G of the Industrial Disputes Act in view of law laid down by the Hon'ble Apex Court (2015 supra). Otherwise also from testimony of petitioner coupled with seniority list are irresistible inference which may be drawn is that several junior persons whose names were mentioned in para no.5 of affidavit of petitioner were still working with the respondent whereas the services of petitioner were terminated without serving any notice by the respondent. Thus, principle of 'Last come First go' envisaged under Section 25-G was not followed. Similarly, while recruiting or engaging new hands even petitioner was not offered an opportunity to work rather respondent in his reply admitted that he failed to enter the name of the petitioner while preparing seniority list of Wild Life Bilaspur Division claiming that nature of work was seasonal in nature and consequently petitioner abandoned the job of his own who used to attend the work intermittently on his own whims and convenience and thus respondent has not issued any notice calling upon the petitioner to join of his duties but from evidence of respondent no inference of abandonment can be drawn which was to be proved like any other fact by leading cogent evidence. Having not issued any legal notice to the petitioner cannot be stated to have abandoned the job and for said reason plea of petitioner deserves to be accepted that services of petitioner have been illegally terminated in the year 2011. It is settled law for applicability of Section 25-G of Industrial Disputes Act petitioner is not required to prove having worked for 240 days in a year as has been held by Hon'ble Apex Court in **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. Thus, in case in hand although petitioner has factually not worked for 240 days yet he would be entitled to provisions of Section 25-G of Industrial Disputes Act. In view of the foregoing discussions, it is held that petitioner has failed to prove violation of provisions of Section 25-F of the Industrial Disputes Act however petitioner has duly proved violation of Section 25-G and Section 25-H of the Act by the respondent. Issue no.1 is thus answered in affirmative holding that termination of services of petitioner during April, 2011 by Divisional Forest Officer, Hamirpur is illegal and unjustified being in violation of provisions of Sections 25-G and 25-H of Industrial Disputes Act.

14. With regard to source of income of petitioner ever since termination of his services, it is relevant mention here that petitioner although in claim petition as well as affidavit has mentioned

that he remained unemployed who had no source of income whatsoever but in the witness box in his cross-examination, he has admitted that he had 4-5 bighas cultivable land on which he did cultivation work. Thus, petitioner had sufficient and reasonable income from agricultural pursuits who cannot be stated to be not gainfully employed. However, keeping in view the manner petitioner was verbally disengaged from his job, he would be liable to reinstatement by the respondent with his seniority and continuity in service **except back wages**. Both these issues are answered accordingly.

ISSUE NO.3

15. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

16. As sequel to my findings on foregoing issues, the reference/claim petition is allowed in part. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of March, 2016.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT MANDI)

Ref No. : 08/2013

Date of Institution : 22.01.2013

Date of decision : 30.03.2016

Shri Khem Raj s/o Shri Dila Ram, r/o Village Neri, P.O. Doghri, Sub Tehsil Nihri, District Mandi, H.P. . .*Petitioner*.

Versus

The Divisional Forest Officer, Sunder Nagar, District Mandi, H.P. . .*Respondent*.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Sh. Khem Raj, S/O Sh. Dila Ram, Village Neri, P.O. Doghri, Sub-Tehsil Nihri, Distt. Mandi, H.P. from time to time during 1999 to 2010 by The Divisional Forest Officer, Sunder Nagar Distt. Mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified. If not, what amount of back wages, seniority, past service benefits and compensation the above Ex- Worker is entitled to from the above employer?"

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Briefly stated the facts of the case are that applicant (hereinafter called as petitioner) was engaged as daily waged beldar by forest department at the Forest Range Kangoo on 1.5.1998 where he worked continuously till 2008 when his services were illegally terminated vide oral order of the official of the respondent. The petitioner alleges that thereafter he joined as daily waged beldar on 12.6.2009 and was given fictional breaks on 5.6.2009 without oral or any written order. Similarly, petitioner was again given fictional breaks on 6.1.2010 and asked to join on 11.1.2010 followed by another fictional break given on 30.1.2010 and later asked to join on 7.2.2010 and since than petitioner has been working continuously. The petitioner claims that he has served the respondent/department without break and for more than 240 days. The artificial break and illegal oral termination order, the juniors of the petitioner had been regularized whereas services of petitioner were terminated intermittently. The grievance of petitioner remains that respondent had not adhered to the principle of 'Last come First go' envisaged under Section 25-H of Industrial Disputes Act and also no notice was given at the time of his illegal termination. Accordingly, petitioner prays that the period of fictional break be declared illegal, unjustified be deemed to be as in continuous service of the petitioner and fictional breaks given by ignoring principle of 'Last come First go' envisaged under Section 25-G of the Act also be followed. Thus, prayer has been made by the petitioner for his reengagement as beldar in the same place in the same capacity as he was at the time of illegal disengagement with all consequential benefits including seniority, work charge status and regularization.

4. The respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits stated that the petitioner was initially engaged as casual labourer to carryout the seasonal forestry works in January, 1999 where he had worked upto March, 2003. It is contended that petitioner was an intermittent worker who had not been disengaged rather petitioner of his own left the work and never worked from April, 2003 to May, 2008 as is evident from mandays chart. It is also alleged that petitioner remained absent continuously for several years and thereafter he joined work in

June, 2008. It is also contended that petitioner had not worked for continuously for 240 days since the date of his initial engagement which is clear from the mandays chart besides denied any fictional breaks having been given by the respondent to the petitioner with objects that the petitioner had not completed 240 days in a calendar year. It is asserted that the services of only those daily waged labourers were regularized who had completed eight years of continuous service with minimum of 240 days in each calendar year per policy of the State Government. It is also pleaded that respondent/department has duly adhered to the principle of 'Last come First go' and that the petitioner was still working as casual labourer with respondent/department. Accordingly, the petition was sought to be dismissed.

5. No rejoinder to the reply was filed by the petitioner as is evident from order dated 25.2.2014.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC as Ex. PW1/A, Ex. PW1/B is the seniority list, Ex. PW1/C is the mandays chart and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ajit Kumar Thakur, the then Divisional Forest Officer, Sundar Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/C is the seniority list and closed evidence. On additional evidence during the pendency of the claim petition, petitioner moved application for additional evidence which was allowed and in pursuance to which petitioner had tendered/proved Ex. X1 to X6. This list addressed to various forest officials who were junior to petitioner and their services shown to have been regularized. The respondent does not lead any evidence in response to additional evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed by my ld. Predecessor on 25.2.2014 for determination which are as under:

1. Whether time to time termination/giving breaks in service to the petitioner by the respondent from the years 1999 to 2010 is/was illegal and unjustified as alleged? . .*OPP*.

2. Whether the claim petition is not maintainable in the present form? . .*OPR*.

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . .*OPR*.

4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly under the supervision of Range Officer, Kangoo upto 2010 and his services had been engaged and disengaged by the respondent/department by giving fictional breaks to petitioner besides maintained that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to these fictional breaks from 1999 till 2010 besides denied that petitioner had not worked for 2004 to May, 2008 although admitted that petitioner had worked after 2012 with the respondent. Be it noticed that in cross-examination petitioner has denied that the respondent had not kept any junior to him.

11. Ex. RW1/B is mandays chart of petitioner reflecting that he had been appointed in the month of January, 1999. The contents of said document revealed abstract of working mandays showing that petitioner to have worked for 180 days in 1999, 186 days in 2000, 233 days in 2001, 179 days in 2002, 69 days in 2003, 148 days in 2008, 199 days in 2009, 141 days in 2010, 166 days in 2011, 222 days in 2012. Be it stated that petitioner has admitted that department/respondent had regularized the services of only those workers who had fulfilled the conditions but the case of petitioner primarily remains that he had been given fictional breaks and that co-workers who were junior to him were retained whereas he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year and thus could not avail benefit of Section 25-B of the Industrial Disputes Act.

12. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of January, 1999 as claimed by him. This facts find support from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart referred to above unfolds the fact that petitioner had worked for 180 days in 1999, 186 days in 2000, 233 days in 2001, 179 days in 2002, 69 days in 2003, 148 days in 2008, 199 days in 2009, 141 days in 2010, 166 days in 2011, 222 days in 2012 and therefore when petitioner had served respondent for more than 150 days in several calendar years as per mandays chart it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly establishes that in order to escape liability, plea of forestry work being seasonal in nature has been taken. It is nowhere in evidence of respondent that forest department has been declared as seasonal work so far as required under the law.

13. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty intermittently cannot be construed to mean that concerned workman has abandoned the job. There is no iota of evidence on record establishing that any notice was ever issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman. Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. Ld. Dy. D.A. representing respondent has taken through in the crossexamination of petitioner wherein has admitted that he had not worked with the respondent w.e.f. 2004 to 2008 and at the same time he has also admitted correctness of mandays chart Ex. RW1/B. On going through the testimony of petitioner as PW1, it is evident that although petitioner has admitted in crossexamination that he did not work from January, 2004 to May, 2008 but clarified by submitting that the respondent/department had removed him from service. So no fault can be found for the absence of the petitioner from January, 2004 to May, 2008. Thus, from the oral as well as documentary evidence on record, it is evident that the services of petitioner was engaged and disengaged whimsically retaining juniors and giving fictional breaks to petitioner which entitles him for relief claimed by him. Accordingly, it is held that respondent had given fictional break to petitioner from 1999 to 2010 which is unfair labour practice and this period is to be counted for the purpose of 'continuous service' envisaged under Section 25-B of the Industrial Disputes Act.

15. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily while giving fictional breaks by respondent in violation of Section 25-G of the Act. It is evident from the seniority list that after engagement of petitioner workers who were junior to him had been engaged some of them have been regularized which goes to show that these workers had not been given any break in their service. Thus when petitioner who was senior to these junior workers had given fictional breaks, the action of the respondent primarily reflects arbitrariness and whimsical manner and picking few workmen for work and is ignored. It has been contended by the ld. Authorized Representative of petitioner that break given during 1999 to 2010 was deliberate on the part of respondent with the object that petitioner did not completed 240 days entitled him benefit of Section 25-B of the Industrial Disputes Act and manifestly in the nature of fictional breaks. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 1999 to 2010 is primarily an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of "continuous service" envisaged under Section 25-B of the Act. Ld. AR for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time to the petitioner as stated above which is illegal and unjustified as has come in the evidence. As the petitioner herself has not discharged initial onus qua remaining unemployed during break period or not gainfully employed, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issue no.1 for the aforestated reason is answered in affirmative in favour of petitioner and against respondent.

ISSUE NO.2

16. Ld. Dy. D.A. representing State/respondent department has contended with vehemence that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given

fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.3

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 2010 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketingcum- Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is to be in continuous uninterrupted service with the respondent from **1999 to 2010** and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent as stated above with all consequential benefits **except back wages**. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT MANDI)

Ref No. : 297/2015

Date of Institution : 13.07.2015

Date of decision : 30.03.2016

Shri Ashwani Kumar s/o late Shri Kirpa Ram, r/o Village Narwana, P.O. Yol Camp, Tehsil Dharamshala, District Kangra, H.P. . .*Petitioner*.

Versus

The Manager, H.P. Tourism Development Corporation, Dharamshala, Tehsil Dharamshala, District Kangra, H.P. . .*Respondent*.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Respondent already exparte

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Ashwani Kumar S/O Late Shri Kirpa Ram, R/O Village Narwana, P.O. Yol Camp, Tehsil Dharamshala, District Kangra, H.P. w.e.f. 06-04- 2014 by the Manager, H.P. Tourism Development Corporation Dharamshala, Tehsil Dharamshala, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the petitioner had been engaged on daily waged basis as Carpenter w.e.f. 7.7.2012 by the Manager, H.P. Tourism Hotel, Dhauladhar where the petitioner continued to work in the said capacity upto 5th April, 2014 without any breaks. It is alleged that while appointing petitioner no appointment letter was given to him and at the same time no attendance card and wage slip was made although petitioner was paid salary for every month on bill voucher through Punjab National Saving Bank Account No.0136000100294019. Averments made in the claim petition revealed that daily rate of carpenter category had been fixed by State of H.P. on 1.9.2012 and thus respondent had paid petitioner less wages under Minimum Wages Act. Thereafter, petitioner approached the Manager requesting him to pay daily rate @ Rs.271/- w.e.f. 1.9.2012 and revised daily rate from time to time w.e.f. 31.3.2014 alongwith difference of arrears but on demanding minimum wages, the services of petitioner were terminated w.e.f. 6.4.2014 without notice. The grievances of petitioner remains that if services of petitioner had been terminated without complying necessary provisions of the Industrial Disputes Act, 1947. Averments made in the claim petition further revealed that the services of petitioner were satisfactory upto the mark who had never given any opportunity to his superior for any complaint. It is alleged that petitioner was working with Assistant Engineer/SDO of Tourism Hotels Corporation Dharamshala and Assistant Engineer had passed resolution and deputed the petitioner to other Tourism Hotels of Corporation from time to time to attend the complaints of carpentry works but the headquarter of the petitioner was fixed at Hotel Dhauladhar, Dharamshala. It is claimed that at the time of unlawful termination of services of petitioner w.e.f. 6.4.2014 respondent had not issued any show cause notice although petitioner had worked for more than 240 days continuously from 7.7.2012 to 5.4.2014. Thus, petitioner claims that termination of services by the respondent without giving any opportunity to the petitioner for reemployment was in violation of provisions of Section 25-H of the Industrial Disputes Act. Accordingly, action of the respondent in terminating the services of petitioner w.e.f. 6.4.2014 was stated to be highly unlawful, arbitrary and in violation of provisions of the Industrial Disputes Act. It is claimed that petitioner was still unemployed and not gainfully employed till now and he is entitled for full back wages from his illegal termination w.e.f. 6.4.2014. Accordingly, petitioner seeks quashing of order of termination and direction to the respondent to reinstate him in service with seniority and continuity in service with full back wages from 6.4.2014 and other consequential benefits along with costs of litigation.

4. The respondent was served through Shri Rajinder Gupta, Manager, HP Tourism Corporation Dharamshala who did not appear despite due service. As such, he was preceded against exparte and petitioner was allowed to lead exparte evidence.

5. Stepping into the witness box as PW1 petitioner has sworn in affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein all the averments as maintained in the claim petition. While tendering his affidavit in examination-inchief petitioner has led documentary evidence filing copy of compliant dated 16.4.2014 Ex. PW1/B, Ex. PW1/C the EPF slip, Ex. PW1/D is the LIC receipt of HP Tourism Department, Ex. PW1/E bank pass book, Ex. PW1/F letter and closed evidence.

6. Evidence of petitioner which has remained unrebutted establishes that petitioner was engaged as Carpenter or daily wage basis by Manager, HP Tourism Dhauladhar Hotel where he worked from 7.7.2012 to 5.4.2014. The evidence on record clearly shows that petitioner had been deputed in various branches of the HP Tourism Hotels for carpentry work. Non appearance of respondent despite due service is suggestive of the fact that respondent had nothing to say in its defense to repudiate allegations of the petitioner which are liable to be accepted. The fact that petitioner had worked with the respondent is also evident from complaint Ex. PW1/F made to Labour Officer Dharamshala vide which stipulated not only the period for which the petitioner was engaged rather the total amount of wages paid was not in consonance with the provisions of Minimum Wages Act. The petitioner has claimed that minimum salary of Rs.271/- liable to be paid by the respondent for wages per day but in lieu thereof even after having worked for whole of the month gross salary of Rs.4000/- per month was paid. Ex. PW1/E is statement of account number of petitioner which shows receipt of payments of petitioner by the respondent. Ex. PW1/C is the receipt showing that a sum of Rs.1169 had been deducted and deposited in petitioner's EPF account. Ex. PW1/D is the receipt showing acknowledgement of Rs.80/- on account of payment of LIC. Be it stated that all these documents have remained unchallenged and unrebutted in evidence. Thus, from testimony of petitioner on oath coupled with documents Ex. PW1/B to Ex. PW1/F, it can be safely concluded that petitioner was employed as Carpenter on 7.7.2012 with HP Tourism Hotel, Dhauladhar, Dharamshala where he was paid Rs.4000/- per month and who continued to be paid wages till 6th April, 2008. So relationship of petitioner being employee and respondent being employer is established and non appearance of respondent clearly strengthens the claim of petitioner as claimed by him while filing claim petition. Ld. Authorized Representative for the petitioner contended that petitioner has remained unemployed ever since he was illegally terminated w.e.f. 6th April, 2014 who has alleged in claim petition as well as proved by leading evidence. Although there is no cross-examination of petitioner on this point yet petitioner who is a skilled labourer could not be expected to have remained idle without income as his nature of work is such that performing work on daily basis he could have livelihood from various other sources such as while working with the private contractor or working directly in the houses, buildings and shops etc. Therefore, I am not accepting his plea of having remained not gainfully employed.

7. In view of the foregoing discussion, termination of the services of petitioner w.e.f. 6.4.2014 is set aside and quashed. The respondent is hereby directed to reengage the petitioner forthwith. However in peculiar circumstances while ordering his re-engagement I do not deem it just and proper to order payment of full back wages to the petitioner as prayed. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination however petitioner is awarded with litigation costs of Rs.10,000/-.

8. The reference is answered in the aforesaid terms.

9. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

10. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT MANDI)

Ref No. : 74/2015

Date of Institution : 25.02.2015

Date of Decision : 30.03.2016

Shri Deep Chand s/o Smt. Telu Devi, r/o Village Sarnal, P.O. Jalgraon, Tehsil & District Kullu, H.P. . .*Petitioner*.

Versus

The Divisional Forest Officer, Parvati Forest Division Shamshi, District Kullu, H.P. . .*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dinesh Gupta, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Deep Chand S/O Smt. Telu Devi, R/O Village Sarnal, P.O. Jalgraon, Tehsil & District Kullu, H.P. during June, 1997 to 2007 and finally during July, 2007 by the Divisional forest Officer, Parvati Forest Division Shamshi, District Kullu, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. The claimant/petitioner has instituted present claim petition submitting therein that he was employed in Jari Range on daily wages since June, 1997 where he continued to work till July, 2007 when his services were terminated by respondent without any reason and without serving any notice. The grievance of the petitioner remains that petitioner had worked for more than 240 days in 12 calendar months preceding his termination but requirement of Section 25-F was not complied by the respondent/department. Not only this, while terminating his services, respondent/department retained junior persons and thus principle of 'Last come First go' envisaged under Section 25-G of the Industrial Disputes Act was also not followed. Accordingly, petitioner prays for reengagement in service with seniority and back wages.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits denied allegations of petitioner having worked with the respondent for the period stipulated in the claim petition. It is alleged that factually petitioner was engaged in the month of March, 1997 under Range Officer Jari District Kullu and thereafter

petitioner used to work intermittently on various seasonal work for maintenance of nursery, plantation raising of new plantation and repair of village path till July, 2008. During month of August, 2008 petitioner left the work at his own will as was reflected in the mandays chart which showed that petitioner had never completed 240 days of work in each calendar year as claimed by him. Not only this, after abandoning the job petitioner never turned up to join his duties and therefore question of termination of the services of petitioner did not arise. It has been emphatically denied that there was violation of provisions of Industrial Disputes Act on the part of respondent/department. It has been denied that claimant/petitioner worked continuously since December, 1996 and his services had been terminated without notice was incorrect and that petitioner was not entitled to any relief. It has been also denied that any junior persons had been retained. Accordingly, petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Hira Lal Rana, the then Divisional Forest Officer Parvati, tendered/proved his affidavit Ex. RW1/A under Order 18 Rule 4 CPC, Ex. RW1/B mandays chart of petitioner and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.10.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year June, 1997 to 2007 is/was improper and unjustified as alleged? . .*OPP*.

2. Whether final termination of services of petitioner during July, 2007 is/was improper and unjustified? . .*OPP*.

3. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

4. Whether claim petition is not maintainable in the present form as alleged? . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Discussed

Issue No.4 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NOS.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed off simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B, petitioner is shown to have worked from March, 1997 to July, 2008. In the year 1997 petitioner has worked for 146 days, 84 days in 1998, 210 days in 1999, 214 days in 2000, 135 days in 2001, 236 days in 2002, 122 days in 2003, 82 days in 2004, 56 days in 2005, 42 days in 2006, 06 days in 2007 and 17 days in 2008. It is evident from years 2006, 2007 and 2008 that petitioner had worked merely for 17 days in 2008, 6 days in 2007 and 42 days in 2006. As such, from bare glance of the mandays chart, no inference of petitioner having worked for 240 days preceding his termination could be drawn. Since the petitioner had not factually worked for 240 days in any of the years as shown in mandays chart, it would be unsafe to hold that petitioner was terminated in violation of provisions of Section 25 F of the Industrial Disputes Act rather no notice or wages in lieu of notice period was required to be given under Section 25- F of the Industrial Disputes Act.

12. In so far as plea of abandonment of job or work being performed by the petitioner of seasonal nature is concerned as per plea of respondent is concerned, the petitioner in his statement in cross-examination has admitted that he worked with the forest department for seasonal work. He has denied that he used to attend the work at his own will. He has admitted that the mandays chart Ex. RW1/B submitted by the department was correct. Since respondent has not produced any documents which would show that forest activities would be seasonal in nature as there is no corresponding notification issued by government to that effect. As such, it cannot be stated that the work with the respondent was purely of seasonal in nature but the plea of abandonment had to be proved by respondent by leading cogent evidence. By merely stating that petitioner was not attending the work regularly or that he left the job of his own and did not report for duty respondent was required to take action by issuing legal notice qua unauthorized absence which has not been done. There is nothing in testimony of respondent of Shri Hira Lal Rana that any notice was issued to the petitioner on his unauthorized absence. As such, neither plea of forest work being seasonal activities nor abandonment gets established from respondent's evidence but certainly petitioner has failed to prove that he had worked for 240 days in 12 calendar months preceding date of termination. Accordingly, it is held that respondent has not violated the provisions of Section 25-F of the Industrial Disputes Act.

13. On the point of time to time termination, petitioner has not produced any seniority list by which it would be inferred that persons junior to petitioner had been engaged or allowed to be retained in service while terminating service of petitioner. Significantly, petitioner in his cross-examination himself has demolished his case by stating specifically on oath that department had not kept any one junior to him in the department which goes to show that there was no retention of juniors by the respondent/department. That being so, plea of time to time termination is not tenable. On the point of means of livelihood petitioner himself has stated that he owned property and had cultivable land. Thus, it cannot be stated that petitioner was not gainfully employed. Be it stated that no such plea was raised in the claim petition. Keeping in view of the above, the respondent having not retained any junior while terminating the services of petitioner, it would be unsafe to hold that respondent/department had violated the provisions of Section 25-H of the Industrial Disputes Act. In view of the foregoing discussions, issues no.1 to 3 are decided in negative and for similar reason petitioner is held not entitled in any service benefits such as back wages, reinstatement or continuity in service. Issues no.1 to 3 are decided in negative against the petitioner and in favour of respondent.

ISSUE NO.4

14. Since the petitioner had failed to establish that respondent had violated either the provisions of Section 25-F, 25-G or 25-H of the Industrial Disputes Act, claim petition is held to be not maintainable. This issue is decided against the petitioner and in favour of the respondent.

RELIEF

15. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of March, 2016.

(K. K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT MANDI)

Ref No. : 73/2015

Date of Institution : 25.02.2015

Date of Decision : 30.03.2016

Shri Rohlu Ram s/o Shri Sant Ram, r/o Village Shauch, P.O. Dhara, Tehsil & District Kullu, H.P. . .*Petitioner*.

Versus

The Divisional Forest Officer, Parvati Forest Division Shamshi, District Kullu, H.P. . .*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dinesh Gupta, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

> "Whether time to time termination of services of Shri Rohlu Ram S/O Shri Sant Ram, R/O Village Shauch, P.O. Dhara, Tehsil & District Kullu, H.P. during September, 1996 to January, 2008 and finally during February, 2008 by the Divisional Forest Officer, Parvati Forest Division, Shamshi, District Kullu, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. The claimant/petitioner has instituted present claim petition submitting therein that he was employed in Jari Range on daily wages since September, 1996 where he continued to work till March, 2008 when his services were terminated without any reason and notice. The grievances of the petitioner remains that he had worked for more than 240 days in 12 calendar months preceding his termination but requirement of Section 25-F was not complied by the respondent/department. Not only this, while terminating his services, respondent/department retained junior persons and that principle of 'Last come First go' envisaged under Section 25-G of the Industrial Disputes Act was also not followed. Accordingly, petitioner prays that he be reengaged with back wages and seniority.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits denied allegations of petitioner having worked with the respondent for the period stipulated in the claim petition. It is alleged that factually petitioner was engaged in the month of September, 1996 under Range Officer Jari District Kullu and thereafter petitioner used to work intermittently on various seasonal work for maintenance of nursery, plantation raising of new plantation and repair of village path till February, 2008. During month of February, 2008 petitioner left the work at his own will as was reflected in the mandays chart which showed that petitioner had never completed 240 days of work in each calendar year as claimed by him. Not only this, after abandoning the job petitioner never turned up and therefore question of termination of the services of petitioner did not arise. It has been emphatically denied that there was violation of provisions of Industrial Disputes Act on the part of respondent/department. It has been denied that claimant/petitioner worked continuously since December, 1996 and his services had been terminated without notice was incorrect and that petitioner was not entitled to any relief. It has been also denied that any junior persons had been retained. Accordingly, petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Hira Lal Rana, the then Divisional Forest Officer Parvati, tendered/proved his affidavit Ex. RW1/A under Order 18 Rule 4 CPC, Ex. RW1/B mandays chart of petitioner and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.10.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year September, 1996 to January, 2008 is/was improper and unjustified as alleged? . .*OPP*.

2. Whether final termination of services of petitioner during February, 2008 is/was improper and unjustified? . .*OPP*.

3. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP*.

4. Whether claim petition is not maintainable in the present form as alleged? . .*OPR*.

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Discussed

Issue No.4 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NOS.1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. As per mandays chart Ex. RW1/B, petitioner is shown to have worked from December, 1996 to February, 2008. In the year 1996 he has worked for 24 days, 177 days in 1997, 174 days in 1998, 220 days in 1999, 242 days in 2000, 16 days in 2001, 119 days in 2002, 16 days in 2003, 24 days in 2005, 27 days in 2006, 29 days in 2007 and 29 days in 2008. It is evident from years 2006, 2007 and 2008 that petitioner had worked merely for 29 days in 2008, 29 days in 2007 and 27 days in 2006. As such, bare glance of the mandays chart that no inference of petitioner having worked for 240 days preceding his termination could be drawn. Although in the year 2000 petitioner Rohlu Ram is shown to have worked for 242 days but he continued to remain working with the respondent/department till 2008 and in preceding 12 months he had not factually worked for 240 days as shown in mandays chart it would be unsafe to hold that petitioner was terminated in violation of provisions of Section 25-F of the Industrial Disputes Act rather no notice or wages in lieu of notice period was required to be given due to which petitioner has failed to meet the requirement of Section 25-F of the Industrial Disputes Act. In so far as plea of abandonment or work being performed by the petitioner of seasonal nature is concerned, the petitioner in his statement in crossexamination has admitted that he worked with the forest department for seasonal work. He has denied that he used to attend the work of his own will. He has admitted that the

mandays chart Ex. RW1/B submitted by the department was correct. Since respondent has not produced any documents which would show that forest activities would be seasonal in nature as there is no corresponding notification issued by government to that effect. As such, it cannot be stated that the work with the respondent was purely of seasonal in nature but the plea of abandonment had to be proved by respondent by leading evidence. By merely stating that petitioner was not attending the work regularly or that he left the job of his own and did not report for duty sincerely shows that respondent/department when petitioner remaining absented from job omitted any legal notice to him. There is nothing in testimony of respondent of Shri Hira Lal Rana that any notice was issued to the petitioner to attend the work/job. As such, neither plea of forest work being seasonal activities nor abandonment get established from respondent's evidence but certainly petitioner has failed to prove that he had worked for 240 days in 12 calendar months preceding date of termination. Accordingly, it is held that respondent has not violated the provisions of Section 25-F of the Industrial Disputes Act.

12. On the point of time to time termination, petitioner has not produced any seniority list by which it would be inferred that persons junior to petitioner had been engaged or allowed to be retained in service when terminating service of petitioner. Significantly, petitioner in his cross-examination himself has demolished his case by stating specifically on oath that department had not kept any one junior to him in the department which goes to show that there was no retention of juniors by the respondent/department. That being so, plea of time to time termination is not tenable. On the point of means of livelihood himself he has own property and was cultivable land. Thus, it cannot be stated that petitioner was not gainfully employed. Be it stated that no such plea was made in the claim petition. Keeping in view of the above the respondent having not retained any junior while terminating the services of petitioner, it would be unsafe to hold that respondent/department had violated the provisions of Section 25-H of the Industrial Disputes Act. In view of the foregoing discussions, issues no.1 to 3 are decided in negative and for similar reason petitioner is held not entitled in any service benefits such as back wages, reinstatement or continuity in service. Issues no.1 to 3 are decided in negative against the petitioner and in favour of respondent.

ISSUE NO.4

13. Since the petitioner had failed to establish that respondent had violated either the provisions of Section 25-F, 25-G or 25-H of the Industrial Disputes Act, claim petition is held to be not maintainable. This issue is decided against the petitioner and in favour of the respondent.

RELIEF

14. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

15. The reference is answered in the aforesaid terms.

16. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

17. File, after due completion be consigned to the Record Room. Announced in the open Court today this 30th day of March, 2016.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

REVENUE DEPARTMENT

NOTIFICATION

Shimla-2, *the* 3rd *August,* 2013

No. Rev-C(A)1-4/2008.—The election for the Chairperson, Himacahl Pradesh Wakf Board under Sub Section (8) of Section 14 of the Wakf Act, 1995 was held on 30-7-2013 at 11-00 A.M. in the presence of Addl. Secretary (Revenue) to the Government of Himachal Pradesh, Shimla-2 in which Sh. Khwaja Khaleel Ullah, s/o Late Sh. Khwaja Aman Ullah, 70/1, Khwaja Building. The Mall Shimla (HP) has been elected unanimously as the Chairperson of the H.P. Wakf Board.

Now, in exercise of the powers conferred under Sub-Section (8) read with clause (a) of Sub Section (1) of Section 14 of the Wakf Act, 1995, the Governor Himachal Pradesh is pleased to appoint Sh. Khwaja Khaleel Ullah, as Chairperson of the H.P. Wakf Board from the date of publication of this notification in Rajpatra, Himachal Pradesh.

The other terms and conditions of the Chairperson will be issued separately.

By order,
Sd/-
Principal Secretary (Revenue).

राजस्व विभाग

(स्टाम्प–रजिस्ट्रीकरण)

आदेश

शिमला–02, 21 जून, 2016

संख्याः रैव0 स्टाम्प (एफ)1–1/2005–IV.—हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश राज्य में यथा लागू भारतीय स्टाम्प अधिनियम, 1899 (1899 का अधिनियम संख्यांक 2) की धारा 9 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, आवासीय प्रयोजन के लिए निर्मित घर के रजिस्ट्रीकरण हेतु हस्तान्तरण विलेख पर, जहां हस्तान्तरण से स्थावर सम्पत्ति का विक्रय होता है, और दान विलेख की लिखतों पर, महिलाओं के पक्ष में स्टाम्प शुल्क को, इस अधिसूचना के राजपत्र (ई–गजट), हिमाचल प्रदेश में प्रकाशन की तारीख से, चार प्रतिशत से घटाकर तीन प्रतिशत करने के सहर्ष आदेश देते है।

आदेश द्वारा,
(तरूण श्रीधर),
अतिरिक्त मुख्य सचिव (राजस्व)।

[*Authoritative English Text of this Department Notification No. Rev. Stamp(F)1-1/2005-IV dated 21/06/2016 as required under Article 348(3) of the constitution of India.*]

REVENUE DEPARTMENT
(Stamp-Registration)

ORDER

Shimla-171002, *the* 21st *June,* 2016

No.Rev.Stamp(F)1-1/2005-IV.—In exercise of the powers conferred by section 9 of the Indian Stamp Act, 1899 (Act No. II of 1899), as applicable to State of Himachal Pradesh, the Governor of Himachal Pradesh is pleased to order to reduce the Stamp Duty from 4% to 3% in favour of women for registration of built up house for residential purpose on instruments of conveyance, where the conveyance amounts to sale of immovable property and gift deed from the date of its publication in the Rajpatra (e-Gazette), Himachal Pradesh.

By order,
(TARUN SHRIDHAR),
Addl. Chief Secy. (Revenue).

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, भलेई, जिला चम्बा (हि0 प्र0)

श्री चतरो पुत्र श्री दुन्नू, निवासी गांव लहमणी, परगना व उप–तहसील भलेई, जिला चम्बा (हि0प्र0) .. प्रार्थी

बनाम

आम जनता .. फरीकदोयम

प्रार्थना पत्र बाबत नाम दरुस्ती जेर धारा 37(2) हि0 प्र0 भू–राजस्व अधिनियम, 1954 के अन्तर्गत करने बारे।

ईश्तहार

प्रार्थी श्री चतरो पुत्र श्री दुन्नू, निवासी गांव लहमणी, परगना व उप–तहसील भलेई, जिला चम्बा (हि0प्र0) ने अदालत हजा में एक प्रार्थना पत्र बाबत नाम दरुस्ती गुजारा है। प्रार्थी ने निवेदन किया है कि उसका नाम ग्राम पंचायत भलेई के परिवार रजिस्टर के रिकार्ड में मेरा नाम चतरो दर्ज है जोकि सही व दरुस्त है लेकिन राजस्व रिकार्ड में मेरा नाम चतरो राम दर्ज है जोकि गलत दर्ज है। इसलिए अब वह अपना नाम मुहाल सलोडी के राजस्व अभिलेख में चतरो राम के बजाये चतरो राम उर्फ चतरो दरुस्त करवाना चाहता है।

अतः सर्वसाधारण को इस ईश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी उक्त का नाम दरुस्त करने बारा कोई उजर व एतराज हो तो वह दिनांक 11–07–2016 को प्रातः 10 बजे असालतन या वकालतन हाजिर होकर अपना उजर व एतराज लिखित रूप में पेश करें। अन्यथा प्रार्थी का नाम दरुस्त करने बारा आदेश पारित कर दिये जायेंगे। इसके उपरान्त कोई भी उजर व एतराज काबले समायत न होगा।

आज दिनांक 03–06–2016 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
भलेई, जिला चम्बा (हि0 प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, भलेई, जिला चम्बा (हि0 प्र0)

श्री विनोद कुमार पुत्र श्री बँको राम, निवासी गांव द्रवला, परगना व उप–तहसील भलेई, जिला चम्बा (हि0प्र0) .. प्रार्थी

बनाम

आम जनता .. फरीकदोयम

प्रार्थना पत्र बाबत नाम दरुस्ती जेर धारा 37(2) हि0 प्र0 भू–राजस्व अधिनियम, 1954 के अन्तर्गत करने बारे।

ईश्तहार

प्रार्थी श्री विनोद कुमार पुत्र श्री बँको राम, निवासी गांव द्रवला, परगना व उप–तहसील भलेई, जिला चम्बा (हि0 प्र0) ने अदालत हजा में एक प्रार्थना पत्र बाबत नाम दरुस्ती गुजारा है। प्रार्थी ने निवेदन किया है कि उसके स्व0 पिता का नाम मुहाल द्रवला के राजस्व अभिलेख में बँको दर्ज है जोकि गलत दर्ज है जबकि ग्राम पंचायत सिमणी के अभिलेख में उसके स्व0 पिता का नाम बँको राम दर्ज है जो की सही दर्ज है। इसलिए अब वह अपने स्व0 पिता का नाम मुहाल द्रवला के राजस्व अभिलेख में बँको के बजाये बँको उर्फ बँको राम दरुस्त करवाना चाहता है।

अतः सर्वसाधारण को इस ईश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी के स्व0 पिता का नाम दरुस्त करने बारा कोई उजर व एतराज हो तो वह दिनांक 11–07–2016 को प्रातः 10 बजे असालतन या वकालतन हाजिर होकर अपना उजर व एतराज लिखित रूप में पेश करें। अन्यथा प्रार्थी का नाम दरुस्त करने बारा आदेश पारित कर दिये जायेंगे। इसके उपरान्त कोई भी उजर व एतराज काबले समायत न होगा।

आज दिनांक 01–06–2016 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित/–
सहायक समाहर्ता द्वितीय श्रेणी,
भलेई, जिला चम्बा (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, भलेई, जिला चम्बा (हि0 प्र0)

श्री प्रताप सिंह पुत्र श्री हुशियारा, गांव रोहट, परगना व उप–तहसील भलेई, जिला चम्बा (हि0प्र0) .. प्रार्थी

बनाम

आम जनता .. फरीकदोयम

प्रार्थना पत्र बाबत नाम दरुस्ती जेर धारा 37(2) हि0 प्र0 भू–राजस्व अधिनियम, 1954 के अन्तर्गत करने बारे।

ईश्तहार

प्रार्थी श्री प्रताप सिंह पुत्र श्री हुशियारा, गांव रोहट, परगना व उप–तहसील भलेई, जिला चम्बा (हि0प्र0) ने निवेदन किया है कि उसके लड़के अनूप कुमार के स्कूल प्रमाण पत्र तथा मेरे स्कूल प्रमाण पत्र व आधार कार्ड पर मेरा नाम प्रताप सिंह दर्ज है। जो की सही व दरुस्त है और राजस्व विभाग में मेरा नाम

प्रतापो दर्ज है जो कि गलत दर्ज है। इसलिए मैं अपना नाम मुहाल भलेई के राजस्व अभिलेख में प्रतापो के बजाये प्रतापो उर्फ प्रताप सिंह करवाना चाहता हूं।

अतः सर्वसाधारण को इस ईश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी उक्त का नाम दरुस्त करने बारा कोई उजर व एतराज हो तो वह दिनांक 11–07–2016 को प्रातः 10 बजे असालतन या वकालतन हाजिर होकर अपना उजर व एतराज लिखित रूप में पेश करें। अन्यथा प्रार्थी का नाम दरुस्त करने बारा आदेश पारित कर दिये जायेंगे। इसके उपरान्त कोई भी उजर व एतराज काबले समायत न होगा।

आज दिनांक 01–06–2016 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
भलेई, जिला चम्बा (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, भलेई, जिला चम्बा (हि0 प्र0)

श्रीमती कौशल्या पत्नी स्व0 श्री दिवान चन्द, गांव कटवाड, परगना व उप–तहसील भलेई, जिला चम्बा (हि0प्र0) .. प्रार्थी

बनाम

आम जनता .. फरीकदोयम

प्रार्थना पत्र बाबत नाम दरुस्ती जेर धारा 37(2) हि0 प्र0 भू–राजस्व अधिनियम, 1954 के अन्तर्गत करने बारे।

ईश्तहार

प्रार्थी श्रीमती कौशल्या पत्नी स्व0 श्री दिवान चन्द, गांव कटवाड, परगना व उप–तहसील भलेई, जिला चम्बा (हि0प्र0) ने निवेदन किया है कि उसके स्व0 पति का नाम मुहाल किलोड के राजस्व अभिलेख में दवानों दर्ज है जो कि गलत दर्ज है जबकि ग्राम पंचायत गवालू के परिवार रजिस्टर रिकार्ड तथा लोक निर्माण विभाग में दिवान चन्द दर्ज है जोकि सही दर्ज है इसलिए मैं अपने मृतक पति का नाम महाल किलोड के राजस्व अभिलेख में दवानों के बजाये दवानों उर्फ दिवान चन्द करवाना चाहती हूं।

अतः सर्वसाधारण को इस ईश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को प्रार्थी के स्व0 पति का नाम दरुस्त करने बारा कोई उजर व एतराज हो तो वह दिनांक 11–07–2016 को प्रातः 10 बजे असालतन या वकालतन हाजिर होकर अपना उजर व एतराज लिखित रूप में पेश करें। अन्यथा प्रार्थी के स्व0 पति का नाम दरुस्त करने बारा आदेश पारित कर दिये जायेंगे। इसके उपरान्त कोई भी उजर व एतराज काबले समायत न होगा।

आज दिनांक 30–05–2016 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
भलेई, जिला चम्बा (हि0 प्र0)।

ब अदालत श्री रघुवीर सिंह, तहसीलदार एवं कार्यकारी दण्डाधिकारी, कुल्लू, जिला कुल्लू, हि0 प्र0

केस नम्बर : 32/B.E./T/2016 तारीख पेशी : 8–07–2016

बनाम सर्वसाधारण एवं आम जनता

विषय.–प्रार्थना–पत्र अधिनियम धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री मुरत राम सपुत्र श्री गुट्टू राम, निवासी वन्शू, डा0 खडीहार, तहसील व जिला कुल्लू, हि0 प्र0 ने इस कार्यालय में प्रार्थना–पत्र दिया है कि उसकी लड़की राधिका का जन्म दिनांक 11–2–2005 को हुआ है परन्तु उसकी जन्म तिथि का इन्द्राज किसी कारणवश ग्राम पंचायत खडीहार के अभिलेख में दर्ज न की गई है।

अतः इस इश्तहार हजा द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को राधिका की जन्म तिथि दर्ज करवाने बारे कोई आपत्ति हो तो वह दिनांक 8–7–2016 को सुबह 10.00 बजे या इससे पूर्व असालतन व वकालनत हाजिर अदालत आकर अपना उजर व एतराज दर्ज करवा सकता है इसके उपरान्त कोई भी उजर / एतराज समायत न होगा तथा नियमानुसार जन्म तिथि दर्ज करवाने के आदेश सम्बन्धित पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 9–6–2016 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
कुल्लू, जिला कुल्लू (हि0 प्र0)।

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ब अदालत श्री रघुवीर सिंह, तहसीलदार एवं कार्यकारी दण्डाधिकारी, कुल्लू, जिला कुल्लू, हि0 प्र0

केस नम्बर : 36/M.E./T/2016 तारीख पेशी : 8–7–2016

1. श्री दीप चन्द पुत्र श्री नोखू राम, निवासी घुड़दौड़, डा0 लरांकिलो, तहसील व जिला कुल्लू, हि0 प्र0।
2. श्रीमती कृष्णा देवी पुत्री श्री मेहर चन्द, निवासी गौशाल, डा0 वाहग, तहसील व जिला कुल्लू, हि0 प्र0 .. प्रार्थीगण

बनाम

आम जनता .. प्रतिवादीगण

विषय.–प्रार्थना–पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम, 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण उपरोक्त ने दिनांक 4–6–2016 को इस अदालत में प्रार्थना–पत्र पेश किया है कि उन्होंने दिनांक 10–9–2001 को हिन्दू रीति रिवाज के अनुसार स्थान घुड़दौड़ में शादी कर ली है और तब से पति पत्नी के रुप में रहते चले आ रहे हैं। परन्तु प्रार्थीगण द्वारा अपनी शादी का इन्द्राज सम्बन्धित पंचायत में नहीं करवाया है।

अतः सर्वसाधारण को व आम जनता को इस इश्तहार द्वारा सूचित किया जाता है कि किसी भी व्यक्ति को उपरोक्त प्रार्थीगणों की शादी को सम्बन्धित पंचायत के अभिलेख में दर्ज करने बारे कोई उजर व एतराज हो तो वह दिनांक 8–7–2016 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत

पेश होकर अपना उजर व एतराज पेश कर सकता है। इसके उपरान्त कोई भी उजर व एतराज प्राप्त न होने की सूरत में नियमानुसार शादी दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 9–6–2016 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर। हस्ताक्षरित / –
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
कुल्लू, जिला कुल्लू (हि0 प्र0)।

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The Court of Shri Hemis Negi, H.A.S., Sub Divisional Magistrate Shimla (Urban), District Shimla, Himachal Pradesh

Shri Urgyen s/o Shri Thandup, r/o 90, D-Block, Tibetan Colony Panthaghati, Tehsil and District Shimla . . *Applicant.*

Versus

General Public .. *Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Shri Urgyen s/o Shri Thandup, r/o 90, D-Block, Tibetan Colony Panthaghati, Tehsil and District Shimla has preferred an application to the undersigned for registration the name and date of birth of his son namely Hem Raj (DOB 18-6-1977) in the record of Municipal Corporation Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 4-7-2016 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 4th day of June, 2016.

Seal. HEMIS NEGI,
Sub-Divisional Magistrate,
Shimla (Urban).

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The Court of Shri Hemis Negi, H.A.S., Sub Divisional Magistrate Shimla (Urban), District Shimla, Himachal Pradesh

Shri Tenzin Tashi s/o Shri Purba Thinley, r/o House No. 19, Anand Bakery, Nabha House P.O. Chaura Maidan Shimla, Tehsil and District Shimla . . *Applicant.*

Versus

General Public .. *Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Shri Tenzin Tashi s/o Shri Phurba Thinley, r/o House No. 19, Anand Bakery, Nabha House, P.O. Chaura Maidan Shimla, Tehsil and District Shimla has preferred an application to the undersigned for registration the name and date of birth of his (DOB 24-12-1980) in the record of Municipal Corporation Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 4-7-2016 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 4th day of June, 2016.

Seal.

HEMIS NEGI,
Sub-Divisional Magistrate,
Shimla (Urban).

The Court of Shri Hemis Negi, H.A.S., Sub Divisional Magistrate Shimla (Urban), District Shimla, Himachal Pradesh

Dolma d/o Shri Purba Thinley, r/o House No. 19, Anand Bakery, Nabha House, P. O. Chaura Maidan Shimla, Tehsil and District Shimla . . *Applicant.*

Versus

General Public .. *Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Dolma d/o Shri Phurba Thinley, r/o House No. 19, Anand Bakery, Nabha House P.O. Chaura Maidan Shimla, Tehsil and District Shimla has preferred an application to the undersigned for registration the name and date of birth of her (DOB 10-3-79) in the record of Municipal Corporation Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 4-7-2016 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 4th day of June, 2016.

Seal.

HEMIS NEGI,
Sub-Divisional Magistrate,
Shimla (Urban).

The Court of Shri Hemis Negi, H.A.S., Sub Divisional Magistrate Shimla (Urban), District Shimla, Himachal Pradesh

Shri Karma Sherap s/o Shri Purba Thinley, r/o House No. 19, Anand Bakery, Nabha House P.O. Chaura Maidan Shimla, Tehsil and District Shimla . . *Applicant.*

Versus

General Public .. *Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Karma Sherap s/o Shri Phurba Thinley, r/o House No. 19, Anand Bakery, Nabha House P.O. Chaura Maidan Shimla, Tehsil and District Shimla has preferred an application to the undersigned for registration the name and date of birth of his (DOB 3-1-78) in the record of Municipal Corporation Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 4-7-2016 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 4th day of June, 2016.

Seal.

HEMIS NEGI,
Sub-Divisional Magistrate,
Shimla (Urban).

The Court of Shri Hemis Negi, H.A.S., Sub Divisional Magistrate Shimla (Urban), District Shimla, Himachal Pradesh

Shri Karma Gyaltsen s/o Shri Purba Thinley, r/o House No. 19, Anand Bakery, Nabha House, P.O. Chaura Maidan Shimla, Tehsil and District Shimla . . *Applicant.*

Versus

General Public .. *Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Karma Gyaltsen s/o Shri Phurba Thinley, r/o House No. 19, Anand Bakery, Nabha House, P.O. Chaura Maidan Shimla, Tehsil and District Shimla has preferred an application to the undersigned for registration the name and date of birth of his (DOB 3-1-78) in the record of Municipal Corporation Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 4-7-2016 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 4th day of June, 2016.

Seal.

HEMIS NEGI,
Sub-Divisional Magistrate,
Shimla (Urban).

The Court of Shri Hemis Negi, H.A.S., Sub Divisional Magistrate Shimla (Urban), District Shimla, Himachal Pradesh

Smt. Tashi Tsamtso w/o Shri Tashi Topgyal, r/o Waho Villa Sarswati Garden Estate, Tibetan Colony, Panthaghati, Tehsil and District Shimla . . *Applicant.*

Versus

General Public .. *Respondent.*

Application under section 13(3) of Birth and Death Registration Act, 1969.

Whereas Smt. Tashi Tsamtso w/o Shri Tashi Topgyal, r/o Waho Villa Sarswati Garden Estate, Tibetan Colony, Panthaghati, Tehsil and District Shimla has preferred an application to the undersigned for registration the name and date of birth of her daughter namely Dicky Lhamo (DOB 20-4-98) in the record of Municipal Corporation Shimla.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of birth mentioned above, may submit his objection in writing in this court on or before 4-7-2016 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 4th day of June, 2016.

Seal.

HEMIS NEGI,
Sub-Divisional Magistrate,
Shimla (Urban).

ब अदालत श्री अनुपम ठाकुर, उप–मण्डलाधिकारी (ना0) डोडरा–क्वार, जिला शिमला, हि0 प्र0

श्रीमती तुंगला देवी पत्नी प्यारे लाल, निवासी धन्द्रवाडी, तहसील डोडरा-क्वार, जिला शिमला, हि0 प्र0

बनाम

आम जनता

दरख्वास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती तुंगला देवी पत्नी प्यारे लाल, निवासी धन्द्रवाडी, तहसील डोडरा-क्वार, जिला शिमला, हि0 प्र0 ने इस कार्यालय में गुजारिश की है कि उसके पुत्र देविन्द्र सिंह पुत्र प्यारे लाल की वास्तविक जन्म तिथि

25–02–1992 है जो कि शैक्षणिक प्रमाण पत्र व आधार कार्ड में सही दर्ज है लेकिन ग्राम पंचायत धन्द्रवाडी के परिवार रजिस्टर में देविन्द्र सिंह की जन्म तिथि 25–09–1990 दर्ज है जो गलत है और आवेदिका पंचायत अभिलेख में सही जन्म तिथि दर्ज करवाना चाहती है।

अतः इस अदालती इश्तहार द्वारा सर्वसाधारण आम जनता को सूचित किया जाता है कि यदि उक्त जन्म तिथि का पंचायत अभिलेख में सही इन्द्राज करने बारा किसी को कोई उजर या एतराज हो तो वह दिनांक 30–06–2016 को या इससे पूर्व कार्यालय में हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा सम्बन्धित ग्राम पंचायत को उक्त जन्म तिथि का इन्द्राज किये जाने के आदेश पारित कर दिये जाएंगे।

मोहर। अनुपम ठाकुर,
उप–मण्डलाधिकारी (ना0),
डोडरा–क्वार, जिला शिमला, हि0 प्र0।

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ब अदालत सहायक समाहर्ता प्रथम श्रेणी, ठियोग, जिला शिमला

श्री देवराज शर्मा पुत्र श्री खेमानन्द शर्मा, निवासी जगचौकी, डा0 नागजुब्बड, तहसील ठियोग .. प्रार्थी

बनाम

आम जनता .. प्रतिवादी

श्री खेमानन्द शर्मा पुत्र श्री रामकृष्ण शर्मा, निवासी जगचौकी, डा0 नागजुब्बड, तहसील ठियोग के लापता बारे।

ईश्तहार

प्रार्थी श्री देवराज शर्मा पुत्र श्री खेमानन्द शर्मा, निवासी जगचौकी, डा0 नागजुब्बड, तहसील ठियोग ने इस न्यायालय में एक प्रार्थना पत्र प्रस्तुत किया है कि उसके पिता श्री खेमानन्द शर्मा पिछले 16 वर्षों से घर से लापता है जिनको ढूंढने के प्रार्थी तथा उसके परिवार द्वारा अलग–अलग स्थानों पर भरसक प्रयास किये गये परन्तु उपरोक्त श्री खेमानन्द शर्मा का कहीं भी पता नही चला। जिस बारे पुलिस थाना ठियोग में गुमशुदा की रिपोर्ट दर्ज करवाई गई। प्रार्थी के पिता श्री खेमानन्द शर्मा का इतने वर्षों से घर वापिस न आना तथा कहीं भी पता न लगने के कारण इस बात से ईन्कार नहीं किया जा सकता कि उक्त व्यक्ति श्री खेमानन्द की मृत्यु हो गई हो।

अतः अदालत को विश्वास हो चुका है कि उपरोक्त प्रार्थी के पिता का अक्समात निधन हो गया हो तथा उसकी अराजी उसके जायज वारसान के पक्ष में की जानी है। अतः इस ईश्तहार द्वारा सूचित किया जाता है कि यदि किसी को भी उपरोक्त खेमानन्द की अराजी उसके जायज वारसान के पक्ष में करने बारे कोई उजर व एतराज हो तो स्वयं व लिखित तौर पर दिनांक 30–06–2016 तक हाजिर अदालत आकर अपना एतराज पेश करे अन्यथा एक तरफा कार्यवाही अमल में लाई जाकर भूमि का ईन्तकाल उसके जायज वारसान के पक्ष में कर दिया जायेगा।

आज दिनांक 01–06–2016 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
ठियोग, जिला शिमला।

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है